CODE OF VIRGINIA

Title 62.1

Waters of The State, Ports and Harbors

Title 62.1 - Waters of the State, Ports and Harbors

Chapter 1 - WATERCOURSES GENERALLY

§§ 62.1-1 through 62.1-4. Repealed.

Repealed by Acts 1992, c. 836.

§ 62.1-5. Repealed.

Repealed by Acts 1987, c. 488.

§ 62.1-6. Clearing watercourses between counties of obstructions.

The circuit court of any county which is divided by a watercourse from another county or through any part of which a watercourse passes may, by itself or in conjunction with the circuit court or circuit courts of any other county or counties, contract with any person or order laborers to be hired to clear such watercourse of obstructions in such manner and to such extent as may seem to it proper, and there shall be charged on any county whatever sum the court thereof may agree to pay for such purpose.

Code 1950, § 62-4; 1968, c. 659.

§ 62.1-7. Rights of improving navigation preserved; dams, etc.

Whatever power is reserved to the General Assembly by any act heretofore passed to abate or remove any dam or other works in a watercourse, or to improve its navigation, shall continue in full force. And in no case shall the right of the Commonwealth, or of any company incorporated for opening, improving, or extending the navigation of any watercourse, to preference in the use of the water flowing therein for the purposes of such navigation be affected by any order of court, which, since the first day of April, 1816, has been made, or hereafter may be made, granting leave to any person to erect a dam or other obstruction across or in such watercourse.

Code 1950, § 62-5; 1968, c. 659.

§ 62.1-8. Limitation on power of courts to grant leave to erect dams.

Where a watercourse is navigable, or by law declared a public highway, no court shall grant leave to any person to erect in that part of it any dam which will obstruct ordinary navigation or the passage of fish; and where any law has been or shall be enacted for opening, improving or extending the navigation of a watercourse no court shall, while such law is in force, grant leave to any person to erect any dam or other obstruction across or in such watercourse which will in any way interfere with the navigation thereof without express authority of law or the consent of the company incorporated to open, improve or extend such navigation. Any such dam shall, notwithstanding it may be built under such leave, be deemed a nuisance, and may be abated as such, or such company or the Commonwealth may make a lock or locks in such dam for the passage of vessels and boats without being required to make any compensation therefor.

Code 1950, § 62-6; 1968, c. 659.

§ 62.1-9. Construction of two preceding sections.

Sections 62.1-7 and 62.1-8 shall not be construed to give any greater or other right to any person who has erected or may erect any dam or other obstruction across or in any watercourse, than such person would have had if such sections had not been enacted.

Code 1950, § 62-7; 1968, c. 659.

§ 62.1-9.1. Repealed.

Repealed by Acts 1992, c. 836.

Chapter 2 - STATE POLICY AS TO 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.

Code 1950, § 62-9.1; 1954, c. 330; 1958, c. 413; 1968, c. 659; 1989, c. 410.

§ 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.

Code 1950, § 62-9.2; 1954, c. 330; 1968, c. 659; 1989, c. 410.

§ 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.

Code 1950, § 62-9.3; 1954, c. 330; 1968, c. 659.

§ 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.

Code 1950, § 62-9.4; 1954, c. 330; 1968, c. 659.

Chapter 2.1 - WETLANDS [Repealed]

§§ 62.1-13.1 through 62.1-13.20. Repealed.
Repealed by Acts 1992, c. 836.

Chapter 2.2 - COASTAL PRIMARY SAND DUNE PROTECTION ACT [Repealed]

§§ 62.1-13.21 through 62.1-13.28. Repealed.
Repealed by Acts 1992, c. 836.

Chapter 3 - STATE WATER CONTROL LAW [Repealed]

§§ 62.1-14 through 62.1-44.1. Repealed.
Repealed by Acts 1970, c. 638.

Chapter 3.1 - STATE WATER CONTROL LAW

Article 1 - GENERAL PROVISIONS

§ 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.

Code 1950, § 62.1-14; 1968, c. 659; 1970, c. 638; 1978, c. 827; 2000, c. 972.

§ 62.1-44.3. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. 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 an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Certificate" means any certificate issued by the Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"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.

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

"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.

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

"Member" means a member of the Board.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 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.

"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.

"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.

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

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

"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.

"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.

"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.

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

"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.

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

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

"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.

"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.

"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.

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

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

"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.

"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.

Code 1950, § 62.1-15; 1968, c. 659; 1970, c. 638; 1988, c. 167; 1990, c. 717; 1991, c. 702; 2000, cc. 972, 1032, 1054; 2003, c. 614; 2007, c. 659; 2015, cc. 104, 677.

§ 62.1-44.3. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. 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 an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Certificate" means any certificate or permit issued by the Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"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.

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

"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.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements of § 62.1-44.15:34 have been met or (ii) a Virginia Erosion and Sediment Control Program authority after the requirements of § 62.1-44.15:55 have been met.

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

"Member" means a member of the Board.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

1. Owned or operated by a federal entity, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including a special district under state law such as a sewer district, flood control district, drainage district or similar entity, or a designated and approved management agency under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. Not a combined sewer; and

4. Not part of a publicly owned treatment works.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 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.

"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.

"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.

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

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

"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.

"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.

"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.

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

"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.

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

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

"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.

"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.

"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.

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

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

"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.

"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.

Code 1950, § 62.1-15; 1968, c. 659; 1970, c. 638; 1988, c. 167; 1990, c. 717; 1991, c. 702; 2000, cc. 972, 1032, 1054; 2003, c. 614; 2007, c. 659; 2015, cc. 104, 677; 2016, cc. 68, 758.

§ 62.1-44.3:1. Certified mail; subsequent mail or notices may be sent by regular mail.
Whenever in this chapter the Board or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board or the Department may be sent by regular mail.

2011, c. 566.

§ 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.

Code 1950, § 62.1-16; 1968, c. 659; 1970, c. 638.

§ 62.1-44.5. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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 or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, 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.

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.

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.

Code 1950, § 62.1-17; 1968, c. 659; 1970, c. 638; 1990, c. 717; 1996, c. 119; 2000, cc. 1032, 1054; 2001, cc. 354, 383; 2004, c. 372; 2013, cc. 756, 793.

§ 62.1-44.5. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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, land-disturbance approval, or permit issued by the Board or other entity authorized by the Board to issue a certificate, land-disturbance approval, or permit pursuant to this chapter, 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;

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; or

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.

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.

Code 1950, § 62.1-17; 1968, c. 659; 1970, c. 638; 1990, c. 717; 1996, c. 119; 2000, cc. 1032, 1054; 2001, cc. 354, 383; 2004, c. 372; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 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.

Code 1950, § 62.1-18; 1968, c. 659; 1970, c. 638.

Article 2 - CONTROL BOARD GENERALLY

§ 62.1-44.7. Board continued.

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

Code 1950, § 62.1-19; 1968, c. 659; 1970, c. 638.

§ 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 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.

Code 1950, § 62.1-20; 1968, c. 659; 1970, c. 638; 2008, cc. 276, 557.

§ 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. Members shall, by their education, training, or experience, be knowledgeable of water quality control and regulation and shall be fairly representative of conservation, public health, business, land development, and agriculture. In making appointments, the Governor shall endeavor to ensure balanced geographical representation. 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 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 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 that are required by federal statute or regulations of the United States Environmental Protection Agency.

Code 1950, § 62.1-21; 1968, c. 659; 1970, c. 638; 1994, c. 461; 2008, cc. 276, 557; 2013, cc. 756, 793; 2014, c. 150.

§ 62.1-44.10. Repealed.

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.

Code 1950, § 62.1-23; 1968, c. 659; 1970, c. 638.

§ 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 (§ 2.2-4100 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.

Code 1950, § 62.1-24; 1968, c. 659; 1970, c. 638; 1977, c. 32; 1981, c. 620.

§ 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.

Code 1950, § 62.1-25; 1968, c. 659; 1970, c. 638.

§ 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 § 2.2-106. 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; and the revocation of certificates. 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. The Executive Director shall be vested with all the authority of the Board when it is not in session, except for the Board's authority to consider permits pursuant to § 62.1-44.15:02 and to issue special orders pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the Executive Director have the authority to adopt or promulgate any regulation.

Code 1950, § 62.1-26; 1968, c. 659; 1970, c. 638; 1981, c. 620; 1984, c. 444; 1985, c. 397; 1992, c. 456; 2005, c. 706; 2013, cc. 756, 793.

§ 62.1-44.15. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Powers and duties; civil penalties.

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 that 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 § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, 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 (§ 2.2-4000 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 that 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. However, to the extent allowed by federal law, any person holding a certificate issued by the Board that is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, reduction in the amount of nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the Department no later than 30 days prior to commencing construction.

(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 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit requirements. 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 pro-

cedure; 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) Except as otherwise provided in Articles 2.4 (§ 62.1-44.15:51 et seq.) and 2.5 (§ 62.1-44.15:67 et seq.), to issue special orders to owners who (i) are permitting or causing the pollution, as defined by § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) 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) have violated the terms and provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) have failed to comply with a directive from the Board to comply with such directive, (v) 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) 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) 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. Except as otherwise provided by a separate article, orders issued pursuant to this subdivision may include civil penalties of up to $32,500 per violation, not to exceed $100,000 per order. The Board may assess penalties under this subdivision if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subdivision. The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11, and except that civil penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) shall be paid in accordance with the provisions of § 62.1-44.15:48.

(8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than 15 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 48 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 § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), 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, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles, or civil charges assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under that article.

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.

(8e) The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the com-

pliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

(8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent or minimize overflows of sewage from such system, the Board shall provide public notice of and reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water Act. Any person who comments on the proposed order shall be given notice of any hearing to be held on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d), any person who commented on the proposed order may file a petition, within 30 days after the issuance of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the petitioner and make available to the public the reasons for such denial, and the petitioner shall have the right to judicial review of such decision under § 62.1-44.29 if he meets the requirements thereof.

(8g) To issue special orders for violations of this chapter to persons constructing or operating any natural gas transmission pipeline greater than 36 inches inside diameter. An order issued pursuant to this subdivision may include a civil penalty of up to $50,000 per violation, not to exceed $500,000 per order. The Board may assess a penalty under this subdivision if (i) the person has been issued at least two written notices of alleged violation by the Department for violations involving the same pipeline; (ii) such violations have not been resolved by a demonstration that there was no violation, by an order issued by the Board or the Director, including an order pursuant to subdivision (8d), or by other means; and (iii) there is a finding that such violation occurred after a hearing was conducted (a) before a hearing officer appointed by the Supreme Court, (b) in accordance with § 2.2-4020, and (c) with at least 30 days' notice to such person of the time, place, and purpose thereof. Such order shall become effective not less than 15 days after service as provided in § 62.1-44.12. The actual amount of any penalty assessed shall be based upon the severity of the violation, the extent of any potential or actual environmental harm, the compliance history of the person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subdivision. The issuance of a notice of alleged violation by the Department shall not be a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact-finding from the Department on whether or not a violation has occurred, and nothing in this subdivision shall preclude a person from seeking

such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.) shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund (§ 62.1-44.15:29).

(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 Wildlife Resources 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 subdivision 11, 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 subdivision 11 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 Wildlife Resources 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 subdivision 11 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 subdivision 11 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 the 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.

(17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water resources between major river basins within the Commonwealth that may impact water basins in another state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1, 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a description of how notice shall be provided to interested parties, and (v) any other requirements that the Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose conditions or limitations on the permitted activity.

(18) To be the lead agency for the Commonwealth's nonpoint source pollution management program, including coordination of the nonpoint source control elements of programs developed pursuant to certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to implement a nonpoint source pollution management program in the Commonwealth, the distribution of assigned funds, the identification and establishment of priorities to address nonpoint source related water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and the development of a program for the prevention and control of soil erosion, sediment deposition, and nonagricultural runoff to conserve Virginia's natural resources.

Code 1950, § 62.1-27; 1968, c. 659; 1970, c. 638; 1972, c. 741; 1975, c. 335; 1976, c. 621; 1977, c. 32; 1978, c. 827; 1984, c. 11; 1985, cc. 249, 397; 1988, cc. 167, 328; 1989, c. 389; 1990, c. 717; 1991, cc. 239, 718; 1993, c. 456; 1994, c. 698; 1998, cc. 805, 863; 2000, cc. 972, 1032, 1054; 2002, cc. 49, 396; 2004, c. 431; 2005, c. 706; 2007, cc. 144, 633, 873, 916; 2011, cc. 52, 101; 2012, cc. 574, 581; 2013, cc. 756, 793; 2020, cc. 449, 958.

§ 62.1-44.15. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Powers and duties; civil penalties.

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 that 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 § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, 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 (§ 2.2-4000 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 that 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 and land-disturbance approvals under prescribed conditions for (a) the discharge of sewage, stormwater, 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. However, to the extent allowed by federal law, any person holding a certificate issued by the Board that is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, reduction in the amount of nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the Department no later than 30 days prior to commencing construction.

(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 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit requirements. 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 or land-disturbance approval 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 or land-disturbance approval, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment, poses a substantial threat of release of harmful substances into the environment, causes unreasonable property degradation, 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 land-disturbance approval, 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 or land-disturbance approval was issued endangers human health or the environment or causes unreasonable property degradation and can be regulated to acceptable levels or practices by amendment or revocation of the certificate or land-disturbance approval; or

4. There exists a material change in the basis on which the certificate, land-disturbance approval, or permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the certificate, land-disturbance approval, or permit necessary to protect human health or the environment or stop or prevent unreasonable degradation of property.

(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 the conditions of any certificates, land-disturbance approvals, standards, policies, rules, regulations, rulings, and orders that 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 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) Except as otherwise provided in subdivision (19) and Article 2.3 (§ 62.1-44.15:24 et seq.), to issue special orders to owners, including owners as defined in § 62.1-44.15:24, who (i) are permitting or causing the pollution, as defined by § 62.1-44.3, of state waters or the unreasonable degradation of property to cease and desist from such pollution or degradation, (ii) 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) have violated the terms and provisions of a certificate or land-disturbance approval issued by the Board to comply with such terms and provisions, (iv) have failed to comply with a directive from the Board to comply with such directive, (v) 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) 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) 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. Except as otherwise provided by a separate article, orders issued pursuant to this subdivision may include civil penalties of up to $ 32,500 per violation, not to exceed $ 100,000 per order. The Board may assess penalties under this subdivision if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subdivision. The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11, and except that civil penalties assessed for violations of subdivision (19) or Article 2.3 (§ 62.1-44.15:24 et seq.) shall be paid into the Stormwater Local Assistance Fund in accordance with § 62.1-44.15:29.1.

(8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the Board with at least 30 days' notice to the affected owners, of the time, place, and purpose thereof, and they shall become effective not less than 15 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 48 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) Except as otherwise provided in subdivision (19), subdivision 2 of § 62.1-44.15:25, or § 62.1-44.15:63, 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 certificate, land-disturbance approval, or 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 subsection (a) of § 62.1-44.32. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (a) of § 62.1-44.32 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), 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, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles, or civil charges assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.5 (§ 62.1-44.15:67 et seq.) or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under Article 2.3 or 2.5.

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.

(8e) The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

(8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent or minimize overflows of sewage from such system, the Board shall provide public notice of and reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water Act. Any person who comments on the proposed order shall be given notice of any hearing to be held on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d), any person who commented on the proposed order may file a petition, within 30 days after the issuance of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the petitioner and make available to the public the reasons for such denial, and the petitioner shall have the right to judicial review of such decision under § 62.1-44.29 if he meets the requirements thereof.

(8g) To issue special orders for violations of this chapter to persons constructing or operating any natural gas transmission pipeline greater than 36 inches inside diameter. An order issued pursuant to this subdivision may include a civil penalty of up to $50,000 per violation, not to exceed $500,000 per order. The Board may assess a penalty under this subdivision if (i) the person has been issued at least two written notices of alleged violation by the Department for violations involving the same pipeline; (ii) such violations have not been resolved by a demonstration that there was no violation, by an order issued by the Board or the Director, including an order pursuant to subdivision (8d), or by other means; and (iii) there is a finding that such violation occurred after a hearing was conducted (a) before a hearing officer appointed by the Supreme Court, (b) in accordance with § 2.2-4020, and (c) with at least 30 days' notice to such person of the time, place, and purpose thereof. Such order shall become effective not less than 15 days after service as provided in § 62.1-44.12. The actual amount of any penalty assessed shall be based upon the severity of the violation, the extent of any potential or actual environmental harm, the compliance history of the person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subdivision. The issuance of a notice of alleged violation by the Department shall not be a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact-finding from the Department on whether or not a violation has occurred, and nothing in this subdivision shall preclude a person from seeking such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-

44.15:51 et seq.) shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund (§ 62.1-44.15:29).

(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 soil erosion control and stormwater management program and 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 Wildlife Resources 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 subdivision 11, 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 subdivision 11 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 Wildlife Resources 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 dis-

charge 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 subdivision 11 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 subdivision 11 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 the 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.

(17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water

resources between major river basins within the Commonwealth that may impact water basins in another state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1, 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a description of how notice shall be provided to interested parties, and (v) any other requirements that the Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose conditions or limitations on the permitted activity.

(18) To be the lead agency for the Commonwealth's nonpoint source pollution management program, including coordination of the nonpoint source control elements of programs developed pursuant to certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to implement a nonpoint source pollution management program in the Commonwealth, the distribution of assigned funds, the identification and establishment of priorities to address nonpoint source related water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and the development of a program for the prevention and control of soil erosion, sediment deposition, and nonagricultural runoff to conserve Virginia's natural resources.

(19) To review for compliance with the provisions of this chapter the Virginia Erosion and Stormwater Management Programs adopted by localities pursuant to § 62.1-44.15:27, the Virginia Erosion and Sediment Control Programs adopted by localities pursuant to subdivision B 3 of § 62.1-44.15:27, and the programs adopted by localities pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The Board shall develop and implement a schedule for conducting such program reviews as often as necessary but at least once every five years. Following the completion of a compliance review in which deficiencies are found, the Board shall establish a schedule for the locality to follow in correcting the deficiencies and bringing its program into compliance. If the locality fails to bring its program into compliance in accordance with the compliance schedule, then the Board is authorized to (i) issue a special order to any locality imposing a civil penalty not to exceed $ 5,000 per violation with the maximum amount not to exceed $ 50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund established in § 62.1-44.15:29.1 or (ii) with the consent of the locality, provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific sums not to exceed the limit stated in this subdivision. Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subsection (a) of § 62.1-44.32 and shall not be subject to the provisions of § 2.2-514. The Board shall not delegate to the Department its authority to issue

special orders pursuant to clause (i). In lieu of issuing an order, the Board is authorized to take legal action against a locality pursuant to § 62.1-44.23 to ensure compliance.

Code 1950, § 62.1-27; 1968, c. 659; 1970, c. 638; 1972, c. 741; 1975, c. 335; 1976, c. 621; 1977, c. 32; 1978, c. 827; 1984, c. 11; 1985, cc. 249, 397; 1988, cc. 167, 328; 1989, c. 389; 1990, c. 717; 1991, cc. 239, 718; 1993, c. 456; 1994, c. 698; 1998, cc. 805, 863; 2000, cc. 972, 1032, 1054; 2002, cc. 49, 396; 2004, c. 431; 2005, c. 706; 2007, cc. 144, 633, 873, 916; 2011, cc. 52, 101; 2012, cc. 574, 581; 2013, cc. 756, 793; 2016, cc. 68, 758; 2020, cc. 449, 958.

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

A. 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 30 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 that 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 15 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 that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

B. On or after January 1, 2007, the Board shall ensure that all wetland inventory maps that identify the location of wetlands in the Commonwealth and that are maintained by the Board be made readily available to the public. The Board shall notify the circuit court clerk's office and other appropriate officials in each locality of the availability of the wetland inventory maps and request that the locality provide information in the location where the land records of the locality are maintained on the availability of the wetland inventory maps as well as the potential Virginia Water Protection Permit requirements.

1993, c. 944; 2005, c. 478.

§ 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.

A. During the public comment period on a permit action, interested persons may request a public hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory under state or federal law or regulation, interested persons may request, during the public comment

period on the permit action, that the Board consider the permit action pursuant to the requirements of this section.

B. Requests for a public hearing or Board consideration shall contain the following information:

1. The name, mailing address, and telephone number of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);

3. The reason why a public hearing or Board consideration is requested;

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the State Water Control Law (§ 62.1-44.2 et seq.).

C. Upon completion of the public comment period on a permit action, the Director shall review all timely requests for public hearing or Board consideration filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing or Board consideration after the public hearing required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if the Director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing or Board consideration;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested is not on its face inconsistent with, or in violation of, the State Water Control Law (§ 62.1-44.2 et seq.), federal law or any regulation promulgated thereunder.

D. Either the Director or a majority of the Board members, acting independently, may request a meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C in order to review such decision and determine by a majority vote of the Board whether or not to grant a public hearing or Board consideration, or to delegate the permit to the Director for his decision.

For purposes of this subsection, if a Board meeting is held via electronic communication means, the meeting shall be held in compliance with the provisions of § 2.2-3708.2, except that a quorum of the

Board is not required to be physically assembled at one primary or central meeting location. Discussions of the Board held via such electronic communication means shall be specifically limited to a (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public business shall be discussed or transacted by the Board during any such meeting held via electronic communication means.

E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public hearing on a permit action or submit a permit action to the Board for its consideration.

G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at a time between 45 and 75 days after mailing of the notice required by subsection E.

H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

I. The Director may, on his own motion or at the request of the applicant or permittee, for good cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for the public hearing after notice has been published, he shall, or require the applicant to, provide reasonable notice of the new date of the public hearing. Such notice shall be published once in the same newspaper where the original notice was published.

J. Public hearings held pursuant to these procedures may be conducted by (i) the Board at a regular or special meeting of the Board or (ii) one or more members of the Board. A member of the Board shall preside over the public hearing.

K. The presiding Board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process expeditiously. The presiding Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:

1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;

2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;

3. Ruling on procedural matters; and

4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.

L. The public comment period will remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01.

M. When the public hearing is conducted by less than a quorum of the Board, the Department shall, promptly after the close of the public hearing comment period, make a report to the Board.

N. After the close of the public hearing comment period, the Board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the Board or the Director. The Board shall not take any action on a permit where a public hearing was convened solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to the Board for its consideration pursuant to the provisions of this section.

O. When the public hearing was conducted by less than a quorum of the Board, persons who commented during the public comment period shall be afforded an opportunity at the Board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the Department for the Board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the Board.

P. In making its decision, the Board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the Board meeting, (iii) the comments and recommendation of the Department, and (iv) the agency files. When the decision of the Board is to adopt the recommendation of the Department, the Board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the Board varies from the recommendation of the Department, the Board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the Board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the Board. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

2008, cc. 276, 557; 2009, c. 627; 2018, c. 55.

§ 62.1-44.15:03. Disposal of fill; notice to locality.

The Department shall establish a process whereby any person that receives coverage under the General Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities and that will be transporting fill from a project site for disposal as part of its land-disturbing activities shall disclose to the Department the following information, which the Department shall disclose to every locality where such fill will be disposed of: (i) the source of the fill to be disposed of, (ii) the contents of the fill, and (iii) the location of the disposal.

2020, c. 565.

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

A. 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 §§ 15.2-5152 through 15.2-5158, to construct any sewerage system, sewage treatment works, or water treatment plant waste treatment works or system necessary to (i) upgrade the present level of treatment in existing systems or works to abate existing pollution of state waters or (ii) 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.

B. 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, P.L. 84-660, as amended.

C. Nothing contained in this chapter shall be construed to empower the Board to adopt the 2013 proposed Aquatic Life Ambient Water Quality Criteria for Ammonia of the U.S. Environmental Protection Agency unless the Board includes in such adoption a phased implementation program consistent with the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that includes (i) consideration of the relative priority of ammonia criteria and other water quality and water infrastructure needs of the local community, (ii) mechanisms to coordinate implementation timing with grant funding mechanisms pursuant to § 10.1-2131 and other treatment facility expansion and upgrade plans, (iii) appropriate long-term compliance schedules for facilities or classes of facilities utilizing multiple permit cycles, and (iv) appropriate mechanisms to address affordability limitations and financial hardship situations remaining notwithstanding the other elements of the phased implementation program.

1971, Ex. Sess., cc. 197, 245; 1973, c. 179; 1975, c. 279; 1981, c. 262; 2018, cc. 510, 511.

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

The Board is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 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.

1991, c. 702.

§ 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.

2000, cc. 103, 119; 2001, c. 116.

§ 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.

1975, c. 339.

§ 62.1-44.15:3. When application for permit 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.

1987, c. 132; 1990, c. 14; 1993, c. 606; 1994, cc. 262, 549; 1995, c. 256; 2000, cc. 19, 98; 2001, c. 492.

§ 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.

1988, c. 434; 1996, c. 160; 1997, c. 581.

§ 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.

1998, c. 795.

§ 62.1-44.15:5. Repealed.

Repealed by Acts 2007, c. 659, cl. 3.

§ 62.1-44.15:5.01. Coordinated review of water resources projects.

A. Applications for water resources projects that require an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § 28.2-1205 shall be submitted and processed through a joint application and review process.

B. The Director and the Commissioner of the Virginia Marine Resources Commission, in consultation with the Virginia Institute of Marine Science, the Department of Wildlife Resources, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Department of Environmental Quality and the Virginia Marine Resources Commission; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments within 45 days of project notification by the Department of Environmental Quality and the Virginia Marine Resources Commission; (iii) the Board and the Virginia Marine Resources Commission shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the Board and the Virginia Marine Resources Commission shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Board and the Virginia Marine Resources Commission shall provide each other with notification of their actions and any and all supporting information, including any background materials or exhibits used in the application. Any state agency asked to review and provide comments in accordance with clause (ii) shall provide such comments within 45 days of project notification by the Department of Environmental Quality and the Virginia Marine Resources Commission or be deemed to have waived its right to provide comment.

D. If requested by the applicant, the Department of Environmental Quality shall convene a pre-application review panel to assist applicants for water resources projects in the early identification of issues related to the protection of beneficial instream and offstream uses of state waters. The Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Wildlife Resources, the Department of Conservation and Recreation, and the Department of Environmental Quality shall participate in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant. However, the participation by these agencies in such a review process shall not limit any authority they may exercise pursuant to state and federal laws or regulations.

2005, c. 49; 2011, cc. 829, 842; 2020, c. 958.

§ 62.1-44.15:5.02. Low-flow protections in Potomac River.

A. Virginia Water Protection Permits issued after July 1, 2007, authorizing withdrawal of water from the Potomac River or its tributaries between the West Virginia border and Little Falls for any purpose other than municipal water supply, shall incorporate low-flow protection requirements if the maximum consumptive use allowed by the permit exceeds 500,000 gallons per day. Such permits shall require that the permittee provide or secure sufficient offstream storage to augment instream flow during low-flow periods in an amount equal to the amount that the permittee's consumptive use exceeds 500,000 gallons per day. The permit shall specify the instream flow volume at which low-flow protection is to be implemented.

B. Permittees may comply with the requirements of this section by: (i) constructing or acquiring facilities for offstream storage of water that may be used to replace their consumptive use withdrawals exceeding 500,000 gallons per day during low-flow periods; (ii) purchasing storage capacity in facilities owned by another entity, sufficient to replace their consumptive use withdrawals exceeding 500,000 gallons per day during low-flow periods; or (iii) agreeing to a permit condition limiting consumptive use to not more than 500,000 gallons per day during low-flow periods as designated in the permit.

C. No owner who holds a Virginia Water Protection Permit as described in this section shall withdraw water for consumptive use in excess of 500,000 gallons per day, except in compliance with permit requirements for low-flow augmentation.

D. Should the implementation of emergency measures pursuant to applicable law, regulation, or interjurisdictional agreement require more stringent temporary restrictions on consumptive use, those requirements shall override the provisions of permits issued pursuant to this section during the period that such requirements are in effect.

E. The requirements of this section shall not apply to the reissuance or amendment of any Virginia Water Protection Permit issued prior to July 1, 2007, unless such reissuance or amendment: (i) authorizes an increase in the permitted withdrawal in excess of 500,000 gallons per day for consumptive

use; or (ii) authorizes a change from nonconsumptive to consumptive use, in excess of 500,000 gallons per day.

2007, c. 656.

§ 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 (§ 2.2-4006 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.

1997, c. 845.

§ 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.

1998, c. 28.

Article 2.1 - Permit Fees

§ 62.1-44.15:6. 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 Wildlife Resources' 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.

B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a Virginia Pollution Abatement permit 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- or Department of the Navy-sponsored dredging projects or for the regularly scheduled renewal of an individual permit for an existing facility. Fees shall be charged for a major modification or reissuance of a permit initiated by the permittee that occurs between permit issuance and the stated expiration date. No fees shall be charged for a modification or amendment made at the Board's initiative. In no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

The fee for the major modification of a permit or certificate that occurs between the permit issuance and expiration dates shall be 50 percent of the maximum amount established by this subsection. No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

B2. Each permitted facility shall pay a permit maintenance fee to the Board by October 1 of each year, not to exceed the following amounts:

An additional permit maintenance fee of $1,000 shall be collected from facilities in a toxics management program and an additional permit maintenance fee shall be collected from facilities that have more than five process wastewater discharge outfalls. Permit maintenance fees shall be collected annually and shall be remitted by October 1 of each year. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the permit maintenance fees for permits held as of April 1, 2004, shall not exceed $20,000 per year. No permit maintenance fee shall be assessed for facilities operating under a general permit or for permits pertaining to a farming operation engaged in production for market.

B3. Permit application fees charged for Virginia Water Protection Permits, ground water withdrawal permits, and surface water withdrawal permits shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions and the size of the proposed impact. Only one permit fee shall be assessed for a water protection permit involving elements of more than one category of permit fees under this section. The fee shall be assessed based upon

the primary purpose of the proposed activity. In no instance shall the Board charge a fee for a permit pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers- or Department of the Navy-sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

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 and shall establish criteria by regulation to provide for reductions in the annual fee amount assessed for facilities accepted into the Department's programs to recognize excellent environmental performance.

1992, cc. 621, 657; 1993, cc. 749, 756; 1995, c. 107; 1997, cc. 115, 154; 2002, c. 822; 2004, cc. 249, 324; 2011, cc. 87, 149; 2018, c. 424; 2020, c. 958.

§ 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 § 2.2-1802, 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.

1992, cc. 621, 657.

§ 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.

1992, cc. 621, 657.

Article 2.2 - Virginia Water Resources and Wetlands Protection Program

§ 62.1-44.15:20. Virginia Water Protection Permit.

A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:

1. Excavate in a wetland;

2. On or after October 1, 2001, conduct the following 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; or

3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

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. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with and give full consideration to any relevant information contained in the state water supply plan described in subsection A of § 62.1-44.38:1 as well as to the written recommendations of the following agencies: the Department of Wildlife Resources, 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. When considering the state water supply plan, nothing shall be construed to limit the operation or expansion of an electric generation facility located on a man-made lake or impoundment built for the purpose of providing cooling water to such facility. 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. If written comments are not submitted by an agency within this time period, the Board shall assume that the agency has no comments on the proposed permit and deem that the agency has waived its right to comment. After the expiration of the 45-day period, any such agency shall have no further opportunity to comment.

D. Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act, except for any applicant to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) to construct any natural gas transmission pipeline greater than 36 inches inside diameter, in which case issuance of a Virginia Water Protection Permit pursuant to this article and a certification issued pursuant to Article 2.6 (§ 62.1-44.15:80 et seq.) shall together constitute the certification required under § 401 of the federal Clean Water Act.

E. No locality may impose wetlands permit requirements duplicating state or federal wetlands permit requirements. In addition, no locality shall impose or establish by ordinance, policy, plan, or any other means provisions related to the location of wetlands or stream mitigation in satisfaction of aquatic resource impacts regulated under a Virginia Water Protection Permit or under a permit issued by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act. However, a locality's determination of allowed uses within zoning classifications or its approval of the siting or construction of wetlands or stream mitigation banks or other mitigation projects shall not be affected by the provisions of this subsection.

F. The Board shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts to wetlands.

2007, c. 659; 2010, c. 233; 2011, cc. 829, 842; 2012, c. 628; 2018, c. 636; 2020, c. 958.

§ 62.1-44.15:21. Impacts to wetlands.

A. 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.

B. 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 (i) wetland creation or restoration, (ii) purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, (iii) contribution to the Wetland and Stream Replacement Fund established pursuant to § 62.1-44.15:23.1 to provide compensation for impacts to wetlands, streams, or other state waters that occur in areas where neither mitigation bank credits nor credits from a Board-approved fund that have met the success criteria are available at the time of permit application, or (iv) contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. The Board shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332). When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (a) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (b) preservation of wetlands.

C. 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 article 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.

D. 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 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, except for construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). 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 any copies of preconstruction notification, postconstruction report, and certificate of compliance required by the U.S. Army Corps of Engineers.

E. 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. Provided the application is not administratively withdrawn, the Board shall, within 120 days of receipt of a complete application, 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. A permit application may be administratively withdrawn from processing by the Board if the application is incomplete or for failure by the applicant to provide the required information after 60 days from the date of the latest written information request made by the Board. Such administrative withdrawal shall occur after the Board has provided (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding pursuant to § 2.2-4019. An applicant may request a suspension of application review by the Board. A submission by the applicant making such a request shall not preclude the Board from administratively withdrawing an application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional notice requirements. In addition, for an individual permit application related to an application to the Federal Energy Regulatory

Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) for construction of any natural gas transmission pipeline greater than 36 inches inside diameter, the Board shall complete its consideration within the one-year period established under 33 U.S.C. § 1341(a).

F. Within 15 days of receipt of a general permit coverage application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Provided the application is not administratively withdrawn, the Board shall, within 45 days of receipt of a complete application, 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. A permit coverage application may be administratively withdrawn from processing by the Board if the application is incomplete or for failure by the applicant to provide the required information after 60 days from the date of the latest written application request made by the Board. Such administrative withdrawal shall occur after the Board has provided (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding pursuant to § 2.2-4019. An applicant may request suspension of an application review by the Board. A submission by the applicant making such a request shall not preclude the Board from administratively withdrawing an application. Resubmittal of a permit coverage application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional notice requirements.

G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities that 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.

H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.

I. No Virginia Water Protection Permit shall be required for wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or storing stormwater, but other permits may be required pursuant to local, state, or federal law. The Department shall adopt guidance to ensure that projects claiming this exemption create no more than minimal ecological impact.

J. An individual Virginia Water Protection Permit shall be required for impacts to state waters for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). For purposes of this subsection:

1. Each wetland and stream crossing shall be considered as a single and complete project; however, only one individual Virginia Water Protection Permit addressing all such crossings shall be required for any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all such crossings, individual review of each proposed water body crossing with an upstream drainage area of five square miles or greater shall be performed.

2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to state waters and protects water quality to the maximum extent practicable, including by the use of applicable best management practices that the Board determines to be necessary to protect water quality.

3. The Department shall assess an administrative charge to any applicant for such project to cover the direct costs of services rendered associated with its responsibilities pursuant to this subsection. This administrative charge shall be in addition to any fee assessed pursuant to § 62.1-44.15:6.

2007, c. 659; 2008, c. 244; 2013, c. 742; 2018, cc. 114, 636; 2019, c. 545; 2020, c. 622.

§ 62.1-44.15:22. Water withdrawals and preservation of instream flow.

A. 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 and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses.

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

C. 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 § 62.1-44.15:20 C 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 § 62.1-44.15:20 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 section 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.

2007, c. 659.

§ 62.1-44.15:23. Wetland and stream mitigation banks.

A. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands or streams, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetland or stream mitigation bank in the Commonwealth, or in Maryland on property wholly surrounded by and located in the Potomac River if the mitigation banking instrument provides that the Board shall have the right to enter and inspect the property and that the mitigation bank instrument and the contract for the purchase or use of such credits may be enforced in the courts of the Commonwealth, 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 (i) the bank is in the same fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset or by the hydrologic unit system or dataset utilized and depicted or described in the bank's approved mitigation banking instrument, as the impacted site, or in an adjacent subbasin within the same river watershed as the impacted site, or it meets all the conditions found in clauses (a) through (d) and either clause (e) or (f) of this subsection; (ii) the bank is ecologically preferable to practicable onsite and offsite individual mitigation options as defined by federal wetland regulations; and (iii) 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 subbasin or adjacent subbasin 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 (a) 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 encompasses multiple river watersheds; (b) there is no practical same river watershed mitigation alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins, as close as possible to the impacted site.

For the purposes of this subsection, the hydrologic unit boundaries of the National Watershed Boundary Dataset or other hydrologic unit system may be adjusted by the Department of Environmental Quality to reflect site-specific geographic or hydrologic information provided by the bank sponsor.

For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin/Big Sandy River Basin Complex, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and the New River Basin.

B. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of 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.

C. State agencies and localities are authorized to purchase credits from mitigation banks.

D. A locality may establish, operate and sponsor wetland or stream single-user mitigation banks within the Commonwealth that have been approved and are operated in accordance with the requirements of subsection A, provided that such single-user banks may only be considered for compensatory mitigation for the sponsoring locality's municipal, joint municipal or governmental projects. For the purposes of this subsection, the term "sponsoring locality's municipal, joint municipal or governmental projects" means projects for which the locality is the named permittee, and for which there shall be no third-party leasing, sale, granting, transfer, or use of the projects or credits. Localities may enter into agreements with private third parties to facilitate the creation of privately sponsored wetland and stream mitigation banks having service areas developed through the procedures of subsection A.

2007, c. 659; 2008, c. 173; 2011, c. 253; 2012, c. 631; 2014, c. 332.

§ 62.1-44.15:23.1. Wetland and Stream Replacement Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Wetland and Stream Replacement Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All contributions to the Board pursuant to clause (iii) of subsection B of § 62.1-44.15:21 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered and utilized by the Department of Environmental Quality. The Fund may be used as an additional mechanism for compensatory mitigation for impacts to aquatic resources (i) that result from activities authorized under (a) Section 404 and 401 of the Clean Water Act (33 U.S.C. § 1251 et seq.), (b) the Virginia Water Protection Permit Regulation (9VAC25-210 et seq.), or (c) Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403); (ii) that result from unauthorized activities in waters of the United States or state waters; and (iii) in other cases, as the appropriate regulatory agencies deem acceptable. Moneys in the Fund shall be used for the purpose of purchasing mitigation bank credits in compliance with the provisions of subsection A of §

62.1-44.15:23 as soon as practicable if qualifying credits are available. If such credits are not available within three years of the collection of moneys for a specific impact, then funds shall be utilized either (1) to purchase credits from a Board-approved fund that have met the success criteria, if qualifying credits are available, (2) for the planning, construction, monitoring, and preservation of wetland and stream mitigation projects and preservation, enhancement, or restoration of upland buffers adjacent to wetlands or other state waters when used in conjunction with creation or restoration of wetlands and streams, or (3) for other water quality improvement projects as deemed acceptable by the Department of Environmental Quality. Such projects developed under clause (2) shall be developed in accordance with guidelines, responsibilities, and standards established by the Department of Environmental Quality for use, operation, and maintenance consistent with 33 CFR Part 332, governing compensatory mitigation for activities authorized by U.S. Army Corps of Engineer permits. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Environmental Quality. The Department may charge a reasonable fee to administer the Fund.

2013, c. 742.

Article 2.3 - STORMWATER MANAGEMENT ACT

§ 62.1-44.15:24. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a plan" means a contract between the VESMP authority or the Board acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this article for the construction of a single-family detached residential structure; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the Board acting as a VSMP authority in lieu of a stormwater management plan.

"Applicant" means any person submitting a soil erosion control and stormwater management plan to a VESMP authority, or a stormwater management plan to the Board when it is serving as a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing activity.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring

properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or any shoreline where the erosion results from wave action or other coastal processes.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means the same as that term is defined in § 62.1-44.3.

"Municipal separate storm sewer" or "MS4" means the same as that term is defined in § 62.1-44.3.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations, and this article and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

"Owner" means the same as that term is defined in § 62.1-44.3. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Permit" means a Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Board pursuant to § 62.1-44.15 for stormwater discharges from a land-disturbing activity or MS4.

"Permittee" means the person to whom the permit is issued.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil Erosion Control and Stormwater Management plan" or "plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to this article.

"Stormwater," for the purposes of this article, means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of a VSMP.

"Subdivision" means the same as that term is defined in § 15.2-2201.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that is established by a VESCP authority pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The VESCP shall include, where applicable, such items as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of Article 2.4 (§ 62.1-44.15:51 et seq.).

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality that is approved by the Board to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.). Only a locality for which the Department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.).

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by a VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of this article.

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the Board or a locality approved by the Board to operate a Virginia Erosion and Stormwater Management Program. For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the Board shall serve as the VESMP authority.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the Board when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § 62.1-44.15:27, has chosen not to adopt and administer a VESMP.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

1989, cc. 467, 499, § 10.1-603.2; 1991, c. 84; 1994, cc. 605, 898; 2004, c. 372; 2006, cc. 21, 171; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2016, cc. 68, 758; 2018, cc. 154, 155.

§ 62.1-44.15:24. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation provisions of this chapter.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L.

92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations, and this article and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general permit coverage has been provided where applicable.

"Permittee" means the person to which the permit or state permit is issued.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

"State permit" means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the Board for stormwater discharges from an MS4. Under these permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations and this article and its attendant regulations.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of a VSMP.

"Subdivision" means the same as defined in § 15.2-2201.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

1989, cc. 467, 499, § 10.1-603.2; 1991, c. 84; 1994, cc. 605, 898; 2004, c. 372; 2006, cc. 21, 171; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2018, cc. 154, 155.

§ 62.1-44.15:25. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate, or amend state stormwater individual permits or coverage issued under state general permits; adopt regulations; approve and periodically review Virginia Stormwater Management Programs and management programs developed in conjunction with a state municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety, and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. The Board may:

1. Issue, deny, amend, revoke, terminate, and enforce state permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land-disturbing activities.

2. Take administrative and legal actions to ensure compliance with the provisions of this article by any person subject to state or VSMP authority permit requirements under this article, and those entities with an approved Virginia Stormwater Management Program and management programs developed in conjunction with a state municipal separate storm sewer system permit, including the proper enforcement and implementation of, and continual compliance with, this article.

3. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), amend or revoke any state permit issued under this article on the following grounds or for good cause as may be provided by the regulations of the Board:

a. Any person subject to state permit requirements under this article has violated or failed, neglected, or refused to obey any order or regulation of the Board, any order, notice, or requirement of the Department, any condition of a state permit, any provision of this article, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations, including the disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

b. Any person subject to state permit requirements under this article has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a state permit, or in any other report or document required under this law or under the regulations of the Board;

c. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

d. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

4. Cause investigations and inspections to ensure compliance with any state or VSMP authority permits, conditions, policies, rules, regulations, rulings, and orders which it may adopt, issue, or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.

5. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), adopt rules governing (i) hearings, (ii) the filing of reports, (iii) the issuance of permits and special orders, and (iv) all other matters relating to procedure, and amend or cancel any rule adopted.

6. Issue special orders to any person subject to state or VSMP authority permit requirements under this article (i) who is permitting or causing the unreasonable degradation of properties, water quality, stream channels, and other natural resources to cease and desist from such activities; (ii) who has failed to construct facilities in accordance with final approved plans and specifications to construct such facilities; (iii) who has violated the terms and provisions of a state or VSMP authority permit issued by the Board or VSMP authority to comply with the provisions of the state or VSMP authority permit, this article, and any decision of the VSMP authority, the Department, or the Board; or (iv) who has violated the terms of an order issued by the court, the VSMP authority, the Department, or the Board to comply with the terms of such order, and also to issue orders to require any person subject to state or VSMP authority permit requirements under this article to comply with the provisions of this article and any decision of the Board.

Such special orders are to be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.) and shall become effective not less than 15 days after the date of mailing with confirmation of delivery of the notice to the last known address of any person subject to state or VSMP authority permit requirements under this article, provided that if the Board finds that any such person subject to state or VSMP authority permit requirements under this article 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 any person subject to state or VSMP authority permit requirements under this article 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 any person subject to state or VSMP

authority permit requirements under this article, to affirm, modify, amend, or cancel such emergency special order. If any person subject to state or VSMP authority permit requirements under this article 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 § 62.1-44.15:48, 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 recipient of the order may appeal its issuance to the circuit court of the jurisdiction wherein the discharge was alleged to have occurred.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.15:48 for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any person subject to state or VSMP authority permit requirements under this article who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VSMP authority, any condition of a state or VSMP authority permit, or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § 62.1-44.15:48. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 62.1-44.15:48 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29.

2004, c. 372, § 10.1-603.2:1; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:25. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board by this chapter, it shall permit, regulate, and control soil erosion and stormwater runoff in the Commonwealth and may otherwise act to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion. It shall be the duty of the Board and it shall have the authority to:

1. Issue special orders pursuant to subdivision (8a) or (8b) of § 62.1-44.15 to any owner subject to requirements under this article, except that for any land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area of a locality that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and that is not part of a larger common plan of development or sale that disturbs one acre or more of land, such special orders may include civil penalties of up to $5,000 per violation, not to exceed $50,000 per order. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.15:48 or Article 5 (§ 62.1-44.20 et seq.) for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

2. With the consent of any owner subject to requirements under this article, the Board may provide, in an order issued by the Board pursuant to subdivision (8d) of § 62.1-44.15 against such owner, for the payment of civil charges for violations in specific sums. Such sums shall not exceed the limit specified in subdivision A 1 or B 1, as applicable, of § 62.1-44.15:48. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to § 62.1-44.15:48 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

2004, c. 372, § 10.1-603.2:1; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:25.1. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Additional local authority.

Any locality serving as a VESMP authority shall have the authority to:

1. Issue orders in accordance with the procedures of subdivision 10 a of § 15.2-2122 to any owner subject to the requirements of this article. Such orders may include civil penalties in specific sums not to exceed the limit specified in subdivision A 2 or B 2, as applicable, of § 62.1-44.15:48, and such civil penalties shall be paid into the treasury of the locality in accordance with subdivision A 2 of § 62.1-44.15:48. The provisions of this section notwithstanding, the locality may proceed directly under § 62.1-44.15:48 for any past violation or violations of any provision of this article or any ordinance duly adopted hereunder.

2. Issue consent orders with the consent of any person who has violated or failed, neglected, or refused to obey any ordinance adopted pursuant to the provisions of this article, any condition of a locality's land-disturbance approval, or any order of a locality serving as a VESMP authority. Such consent order may provide for the payment of civil charges not to exceed the limits specified in subdivision A 2 or B 2, as applicable, of § 62.1-44.15:48. Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under this article. Any civil charges collected shall be paid to the treasury of the locality in accordance with subdivision A 2 of § 62.1-44.15:48.

2016, cc. 68, 758.

§ 62.1-44.15:26. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) State permits.

A. All state permits issued by the Board under this article shall have fixed terms. The term of a state 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 five years. The term of a permit issued by the Board shall not be extended by modification beyond the maximum dur-

ation and the permit shall expire at the end of the term unless it is administratively continued in accordance with Board regulations.

B. State individual construction permits shall be administered by the Department.

2004, c. 372, § 10.1-603.2:2; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:26.1. Termination of Construction General Permit coverage.

A. A VSMP authority shall recommend that the Department of Environmental Quality terminate coverage under a General Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.

B. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VSMP authority of a complete notice of termination from the operator of the construction activity.

C. If a VSMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VSMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

2018, c. 630.

§ 62.1-44.15:27. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Establishment of Virginia Stormwater Management Programs.

A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to participate in the establishment of a VSMP shall be required to adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a schedule set by the Department. Such schedule shall require implementation no later than July 1, 2014. Thereafter, the Department shall provide an annual schedule by which localities can submit applications to implement a VSMP. Localities subject to this subsection are authorized to coordinate plan review and inspections with other entities in accordance with subsection H.

The Department shall operate a VSMP on behalf of any locality that does not operate a regulated MS4 and that does not notify the Department, according to a schedule set by the Department, of its decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). A locality that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) also shall adopt requirements set forth in this article and attendant regulations as required to regulate Chesapeake Bay Preservation Act land-disturbing activities in accordance with § 62.1-44.15:28. To comply with the water quantity technical criteria set forth in this article and attendant regulations, a rural Tidewater locality may adopt a tiered approach to

water quantity management for Chesapeake Bay Preservation Act land-disturbing activities pursuant to § 62.1-44.15:27.2.

Notwithstanding any other provision of this subsection, any county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect, on a schedule set by the Department, to defer the implementation of the county's VSMP until no later than January 1, 2015. During this deferral period, when such county thus lacks the legal authority to operate a VSMP, the Department shall operate a VSMP on behalf of the county and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls. Any such county electing to defer the establishment of its VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.).

B. Any town, including a town that operates a regulated MS4, lying within a county that has adopted a VSMP in accordance with subsection A may decide, but shall not be required, to become subject to the county's VSMP. Any town lying within a county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect to become subject to the county's VSMP according to the deferred schedule established in subsection A. During the county's deferral period, the Department shall operate a VSMP on behalf of the town and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls for the town as provided in subsection A. If a town lies within the boundaries of more than one county, the town shall be considered to be wholly within the county in which the larger portion of the town lies. Towns shall inform the Department of their decision according to a schedule established by the Department. Thereafter, the Department shall provide an annual schedule by which towns can submit applications to adopt a VSMP.

C. In support of VSMP authorities, the Department shall:

1. Provide assistance grants to localities not currently operating a local stormwater management program to help the localities to establish their VSMP.

2. Provide technical assistance and training.

3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the administration of components of their programs. The Department shall actively assist localities in the establishment of their programs and in the selection of a contractor or other entity that may provide support to the locality or regional support to several localities.

D. The Department shall develop a model ordinance for establishing a VSMP consistent with this article and its associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that shall be administered in conjunction with a local MS4 program and a local erosion and sediment control pro-

gram if required pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and which shall include the following:

1. Consistency with regulations adopted in accordance with provisions of this article;

2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

3. Provisions for the integration of the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

F. The Board may approve a state entity, including the Department, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a Virginia Stormwater Management Program consistent with the requirements of this article and its associated regulations and the VSMP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

G. The Board shall approve a VSMP when it deems a program consistent with this article and associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

H. A VSMP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to carry out or assist with the responsibilities of this article. A VSMP authority may enter into contracts with third-party professionals who hold certificates of competence in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VSMP authority, including plan review and inspection but not including enforcement.

I. If a locality establishes a VSMP, it shall issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). When available in accordance with subsection J, such permit, where applicable, shall also include a copy of or reference to state VSMP permit coverage authorization to discharge.

J. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance.

K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review under the stormwater management provisions of the Chesapeake Bay Preservation Act.

L. All VSMP authorities shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and related regulations. The VSMP authority responsible for regulating the land-disturbing activity shall require compliance with the issued permit, permit conditions, and plan specifications. The state shall enforce state permits.

1989, cc. 467, 499, § 10.1-603.3; 2004, c. 372; 2006, c. 171; 2009, c. 18; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2017, c. 349; 2018, c. 154.

§ 62.1-44.15:27.4. Department acceptance of plans in lieu of plan review.

A. Notwithstanding any other provision of this article, the Board, when administering a VSMP or VESMP pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.), may choose to accept a set of plans and supporting calculations for any land-disturbing activity determined to be de minimis using a risk-based approach established by the Board.

B. The Board is authorized to accept such plans and supporting calculations in satisfaction of the requirement of this article that it retain a certified plan reviewer or conduct a plan review. This section shall not excuse any applicable performance bond requirement pursuant to § 62.1-44.15:34 or § 62.1-44.15:57.

2020, c. 812.

§ 62.1-44.15:27. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Programs for Erosion Control and Stormwater Management.

A. Any locality that operates a regulated MS4 or that administers a Virginia Stormwater Management Program (VSMP) as of July 1, 2017, shall be required to adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The VESMP shall be adopted according to a process established by the Department.

B. Any locality that does not operate a regulated MS4 and for which the Department administers a VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.);

2. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), except that the Department shall provide the locality with review of the plan required by § 62.1-44.15:34 and provide a recommendation to the locality on the plan's compliance with the water quality and water quantity technical criteria; or

3. Adopt and administer a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). For such a land-disturbing activity in a Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this article and attendant regulations as required to regulate those activities in accordance with §§ 62.1-44.15:28 and 62.1-44.15:34.

The Board shall administer a VSMP on behalf of each VESCP authority for any land-disturbing activity that (a) disturbs one acre or more of land or (b) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

C. Any town that is required to or elects to adopt and administer a VESMP or VESCP, as applicable, may choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Any town, including a town that operates a regulated MS4, lying within a county may enter into an agreement with the county to become subject to the county's VESMP. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties that operates a VESMP.

2. Any town that chooses not to adopt and administer a VESMP pursuant to subdivision B 3 and that lies within a county may enter into an agreement with the county to become subject to the county's VESMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties.

3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2 only if the county administers a VESMP for land-disturbing activities that disturb 2,500 square feet or more.

D. Any locality that chooses not to implement a VESMP pursuant to subdivision B 3 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1 or 2. Any locality that chooses to implement a VESMP pursuant to subdivision B 2 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1. A locality may petition the Board at any time for approval to change from fully administering a VESMP pursuant to subdivision B 1 to administering a VESMP in coordination with the Department pursuant to subdivision B 2 due to a significant change in economic conditions or other fiscal emergency in the

locality. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall govern any appeal of the Board's decision.

E. To comply with the water quantity technical criteria set forth in this article and attendant regulations for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre, any rural Tidewater locality may adopt a tiered approach to water quantity management pursuant to § 62.1-44.15:27.2.

F. In support of VESMP authorities, the Department shall provide technical assistance and training and general assistance to localities in the establishment and administration of their individual or regional programs.

G. The Department shall develop a model ordinance for establishing a VESMP consistent with this article.

H. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and which shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with this article;

2. Requirements for land-disturbance approvals;

3. Requirements for plan review, inspection, and enforcement consistent with the requirements of this article, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;

4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § 62.1-44.15:28, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;

5. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of land-disturbance approvals, payment of fees, and coordin-

ation of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

I. The Board shall approve a VESMP when it deems a program consistent with this article and associated regulations.

J. A VESMP authority may enter into agreements or contracts with the Department, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections. A VESMP authority may enter into contracts with third-party professionals who hold certifications in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VESMP authority, including plan review and inspection but not including enforcement.

K. A VESMP authority shall be required to obtain evidence of permit coverage from the Department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

L. The VESMP authority responsible for regulating the land-disturbing activity shall require compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan specifications. The Board shall enforce permits and require compliance with its applicable regulations, including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance with subdivision B 3.

1989, cc. 467, 499, § 10.1-603.3; 2004, c. 372; 2006, c. 171; 2009, c. 18; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2016, cc. 68, 758; 2017, c. 349; 2018, c. 154.

§ 62.1-44.15:27.1. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Stormwater Management Programs administered by the Board.

A. The Board shall administer a Virginia Stormwater Management Program (VSMP) on behalf of any locality that notifies the Department pursuant to subsection B of § 62.1-44.15:27 that it has chosen to not administer a VESMP as provided by subdivision B 3 of § 62.1-44.15:27. In such a locality:

1. The Board shall implement a VSMP in order to manage the quality and quantity of stormwater runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance, as required by this article.

2. No person shall conduct a land-disturbing activity until he has obtained land-disturbance approval from the VESCP authority and, if required, submitted to the Department an application that includes a permit registration statement and stormwater management plan, and the Department has issued permit coverage.

B. The Board shall adopt regulations establishing specifications for the VSMP, including permit requirements and requirements for plan review, inspection, and enforcement that reflect the analogous stormwater management requirements for a VESMP set forth in applicable provisions of this article.

2016, cc. 68, 758.

§ 62.1-44.15:27.2. Rural Tidewater localities; water quantity technical criteria; tiered approach.

A. For determining the water quantity technical criteria applicable to a land disturbance equal to or greater than 2,500 square feet but less than one acre, any rural Tidewater locality may elect to use certain tiered water quantity control standards based on the percentage of impervious cover in the watershed as provided in this section. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the Department. The Board shall adopt regulations to carry out provisions of this section.

B. 1. The local governing body shall make, or cause to be made, a watershed map showing the boundaries of the locality. The governing body shall use the most recent version of Virginia's 6th order National Watershed Boundary Dataset to show the boundaries of each watershed located partially or wholly within the locality. The map shall indicate the percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map.

2. The watershed map also shall show locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the energy balance method for water quantity management, as set forth in the regulations adopted by the Board pursuant to this article, shall apply.

3. After the watershed map has been made, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § 15.2-2204. Within 30 days after adoption of the official watershed map, the governing body shall cause the map to be filed in the office of the clerk of the circuit court.

4. At least once each year, the local governing body shall by majority vote make additions to or modifications of the official watershed map to reflect actual development projects. The governing body shall change the indication on the map of the impervious cover percentage within a watershed where the percentage has changed and shall update the map and supporting datasets with actual development project information, including single-family housing projects and any projects covered by the General Permit for Discharges of Stormwater from Construction Activities and administered by the Department for opt-out localities pursuant to § 62.1-44.15:27. The governing body may incorporate into the official watershed map the most recent VGIN data, including data on state and federal projects that are not reviewed or approved by the locality. The governing body shall keep current its imper-

vious cover percentage for each watershed located within the locality, as reflected in the official watershed map, and shall make the map and such percentages available to the public.

5. The locality shall notify the Department and update the official map within 12 months of the approval of the development plan for any project that exceeds the impervious cover percentage of the watershed in which it is located and causes the percentage for that watershed to rise such that the watershed steps up to the next higher tier pursuant to subsection C.

6. No official watershed map or its adopting or amending ordinances shall take precedence over any duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield to such land-use ordinance.

C. When the locality evaluates any development project in a watershed that is depicted on the official watershed map as having an impervious cover percentage of:

1. Less than five percent, the locality shall apply the regulatory minimum standards and criteria adopted by the Board pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) and in effect prior to July 1, 2014, for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.

2. Five percent or more but less than 7.5 percent, the locality shall require practices designed to detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

3. Seven and one-half percent or more, the locality shall apply the energy balance method as set forth in regulations adopted by the Board.

D. The locality shall require that any project whose construction would cause the impervious cover percentage of the watershed in which it is located to rise, such that the watershed steps up to the next higher tier, shall meet the current water quantity technical criteria using the energy balance method or a more stringent alternative.

2018, c. 154.

§ 62.1-44.15:27.3. Acceptance of signed and sealed plan in lieu of local plan review.

A. Any rural Tidewater locality, whether or not it administers a VSMP or VESCP pursuant to § 62.1-44.15:27, may require that a licensed professional retained by the applicant prepare and submit a set of plans and supporting calculations for a land-disturbing activity of 2,500 square feet or more but less than one acre in extent.

B. Such professional shall be licensed to engage in practice in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 and shall hold a certificate of competence in the appropriate subject area, as provided in § 62.1-44.15:30.

C. Such plans and supporting calculations shall be appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

D. The rural Tidewater locality is authorized to accept such signed and sealed plans in satisfaction of the requirement of this article that, for a land-disturbing activity of 2,500 square feet or more but less than one acre in extent, it retain a local certified plan reviewer or conduct a local plan review. This section shall not excuse any applicable performance bond requirement pursuant to § 62.1-44.15:34 or 62.1-44.15:57.

2018, c. 155.

§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State

Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be $750 for each large construction activity with sites or common plans of development equal to or greater than five acres and $450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a $125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

f. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision 5, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for the use of a proprietary best management practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness;

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department;

14. Establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits;

15. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

16. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

17. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

1989, cc. 467, 499, § 10.1-603.4; 1991, c. 84; 2004, c. 372; 2005, c. 102; 2006, c. 21; 2008, c. 405; 2009, c. 709; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2017, cc. 10, 163; 2020, cc. 313, 667.

§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;

2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;

5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;

6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;

7. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VESMP authority;

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale;

d. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for the use of a proprietary best management practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness;

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-

term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

1989, cc. 467, 499, § 10.1-603.4; 1991, c. 84; 2004, c. 372; 2005, c. 102; 2006, c. 21; 2008, c. 405; 2009, c. 709; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2016, cc. 68, 758; 2017, cc. 10, 163; 2020, cc. 313, 667.

§ 62.1-44.15:28.1. Pollutant removal by dredging.

Upon approval by the Chesapeake Bay Program as a creditable practice for pollutant removal, the Board shall establish a procedure for the approval of dredging operations in the Chesapeake Bay Watershed as a method of meeting pollutant reduction and loading requirements. The dredging operation and disposal of dredged material shall be conducted in compliance with all applicable local, state, and federal laws and regulations. Any locality imposing a fee relating to stormwater pursuant to § 15.2-2114 may make funds available for stormwater maintenance dredging, including at the point of discharge, where stormwater has contributed to the deposition of sediment in state waters.

2015, c. 753.

§ 62.1-44.15:29. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Stormwater Management Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to §§ 62.1-44.15:28, 62.1-44.15:38, and 62.1-44.15:71 and all civil penalties collected pursuant to § 62.1-44.19:22 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

2004, c. 372, § 10.1-603.4:1; 2012, cc. 748, 785, 808, 819; 2013, cc. 756, 793.

§ 62.1-44.15:29.2. Stormwater Local Assistance Fund, estimate of requests.

The Department, in consultation with stakeholders, including representatives of the Virginia Municipal Stormwater Association, local governments, and conservation organizations, shall annually determine

an estimate of the amount of stormwater local assistance matching grants expected to be requested by local governments for projects that are related to planning, designing, and implementing stormwater best management practices and are eligible for funding. The Department shall include such estimate in (i) the biennial funding report that is submitted to the Governor pursuant to the provisions of § 2.2-1504 and (ii) the annual progress report on the impaired waters clean-up plan that is submitted to legislative committees pursuant to the provisions of § 62.1-44.118.

2019, c. 533.

§ 62.1-44.15:29. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Stormwater Management Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to § 62.1-44.15:28 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

2004, c. 372, § 10.1-603.4:1; 2012, cc. 748, 785, 808, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:29.1. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Stormwater Local Assistance Fund.

A. The State Comptroller shall continue in the state treasury the Stormwater Local Assistance Fund (the Fund) established by Chapter 806 of the Acts of Assembly of 2013, which shall be administered by the Department. All civil penalties and civil charges collected by the Board pursuant to §§ 62.1-44.15:25, 62.1-44.15:48, 62.1-44.15:63, and 62.1-44.15:74, subdivision (19) of § 62.1-44.15, and § 62.1-44.19:22 shall be paid into the state treasury and credited to the Fund, together with such other funds as may be made available to the Fund, which shall also receive bond proceeds from bonds authorized by the General Assembly, sums appropriated to it by the General Assembly, and other grants, gifts, and moneys as may be made available to it from any other source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. The purpose of the Fund is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. Moneys in the Fund shall be used

to meet (i) obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements, (ii) requirements for local impaired stream TMDLs, (iii) water quality measures of the Chesapeake Bay Watershed Implementation Plan, and (iv) water quality requirements related to the permitting of small municipal separate storm sewer systems. The grants shall be used solely for stormwater capital projects, including (a) new stormwater best management practices, (b) stormwater best management practice retrofitting or maintenance, (c) stream restoration, (d) low-impact development projects, (e) buffer restoration, (f) pond retrofitting, and (g) wetlands restoration. Such grants shall be made in accordance with eligibility determinations made by the Department pursuant to criteria established by the Board.

C. Moneys in the Fund shall be used solely for the purpose set forth herein and disbursements from it shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

2016, cc. 68, 758.

§ 62.1-44.15:30. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Education and training programs.

A. The Board shall issue certificates of competence concerning the content and application of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of VSMP authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge to the satisfaction of the Board. As part of education and training programs authorized pursuant to subsection E of § 62.1-44.15:52, the Department shall develop or certify expanded components to address program administration, plan review, and project inspection elements of this article and attendant regulations. Reasonable fees to cover the costs of these additional components may be charged.

B. Effective July 1, 2014, personnel of VSMP authorities reviewing plans or conducting inspections pursuant to this chapter shall hold a certificate of competence as provided in subsection A. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals.

2012, cc. 785, 819, § 10.1-603.4:2; 2013, cc. 756, 793.

§ 62.1-44.15:30. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Training and certification.

A. The Board shall issue separate or combined certifications concerning specified subject areas of this article, including program administration, plan review, and project inspection, to persons who have demonstrated adequate knowledge to the satisfaction of the Board. The Board also shall issue a Responsible Land Disturber certificate to personnel and contractors who have demonstrated adequate knowledge to the satisfaction of the Board.

B. The Department shall administer education and training programs for specified subject areas of this article and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs.

C. Personnel of VSMP or VESMP authorities who are administering programs, reviewing plans, or conducting inspections pursuant to this article shall hold a certification in the appropriate subject area as provided in subsection A. This requirement shall not apply to third-party individuals who prepare and submit plans to a VESMP or VSMP authority.

D. The Department shall establish procedures and requirements for issuance and periodic renewal of certifications.

E. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals of such certifications.

2012, cc. 785, 819, § 10.1-603.4:2; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:31. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Standards and specifications for state agencies, federal entities, and other specified entities.
A. As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities pursuant to § 62.1-44.15:34, the Virginia Department of Transportation shall, and any other state agency or federal entity may, submit standards and specifications for its conduct of land-disturbing activities for Department of Environmental Quality approval. Approved standards and specifications shall be consistent with this article. The Department of Environmental Quality shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval.

B. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, and authorities created pursuant to § 15.2-5102 may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications may be submitted for the following types of projects:

1. Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

The Department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval. A linear project not included in subdivision 1 or 2, or for which the owner chooses not to submit standards and specifications, shall comply with the requirements of the VESMP or the VESCP and VSMP, as appropriate, in any locality within which the project is located.

C. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34, any person engaging in more than one jurisdiction in the creation and operation of a

wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. The Department shall have 60 days after receipt in which to act on standards and specifications submitted to it or resubmitted to it for approval.

D. All standards and specifications submitted to the Department shall be periodically updated according to a schedule to be established by the Department and shall be consistent with the requirements of this article. Approval of standards and specifications by the Department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations. Standards and specifications shall include:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;

2. Provisions for the long-term responsibility and maintenance of any stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;

3. Provisions for administration of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and compliance;

4. Provisions for ensuring that personnel and contractors assisting the owner in carrying out the land-disturbing activity obtain training or qualifications for soil erosion control and stormwater management as set forth in regulations adopted pursuant to this article;

5. Provisions for ensuring that personnel implementing approved standards and specifications pursuant to this section obtain certifications or qualifications comparable to those required for VESMP personnel pursuant to subsection C of § 62.1-44.15:30;

6. Implementation of a project tracking system that ensures notification to the Department of all land-disturbing activities covered under this article; and

7. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of this article.

E. The Department shall perform random site inspections or inspections in response to a complaint to ensure compliance with this article and regulations adopted thereunder.

F. The Department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section, including standards and specifications review and approval, project inspections, and compliance. The Board may take enforcement actions in accordance with this article and related regulations.

1989, cc. 467, 499, § 10.1-603.5; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758; 2018, c. 627.

§ 62.1-44.15:31. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Annual standards and specifications for state agencies, federal entities, and other specified entities.

A. State entities, including the Department of Transportation, and for linear projects set out in subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and federal entities and authorities created pursuant to § 15.2-5102 may, annually submit a single set of standards and specifications for Department approval that describes how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of this article and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations. Each project constructed in accordance with the requirements of this article, its attendant regulations, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. The standards and specifications shall include:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;

2. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;

3. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;

4. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government;

5. Implementation of a project tracking and notification system to the Department of all land-disturbing activities covered under this article; and

6. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of the article.

B. Linear projects subject to annual standards and specifications include:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of the local or state VSMP in the locality within which the project is located.

C. The Department shall perform random site inspections or inspections in response to a complaint to assure compliance with this article, the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and regulations adopted thereunder. The Department may take enforcement actions in accordance with this article and related regulations.

D. The Department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section.

1989, cc. 467, 499, § 10.1-603.5; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:32. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Duties of the Department.

A. The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to VSMP authorities consistent with the purposes of this article.

B. The Department is authorized to review the stormwater management plan for any project with real or potential interjurisdictional impacts upon the request of one or all of the involved localities to determine that the plan is consistent with the provisions of this article. Any such review shall be completed and a report submitted to each locality involved within 90 days of such request being accepted. The Department may charge a fee of the requesting locality to cover its costs for providing such services.

C. The Department shall be responsible for the implementation of this article.

1989, cc. 467, 499, § 10.1-603.6; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:33. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Authorization for more stringent ordinances.

A. Localities that are VSMP authorities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address TMDL requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

B. Localities that are VSMP authorities shall submit a letter report to the Department when more stringent stormwater management ordinances or more stringent requirements authorized by such ordinances, such as may be set forth in design manuals, policies, or guidance documents developed by the localities, are determined to be necessary pursuant to this section within 30 days after adoption

thereof. Any such letter report shall include a summary explanation as to why the more stringent ordinance or requirement has been determined to be necessary pursuant to this section. Upon the request of an affected landowner or his agent submitted to the Department with a copy to be sent to the locality, within 90 days after adoption of any such ordinance or derivative requirement, localities shall submit the ordinance or requirement and all other supporting materials to the Department for a determination of whether the requirements of this section have been met and whether any determination made by the locality pursuant to this section is supported by the evidence. The Department shall issue a written determination setting forth its rationale within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:

1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a VSMP authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.

2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90 days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure compliance with this section. Any such ordinance or other requirement that has been proposed

but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.

E. Any provisions of a local stormwater management program in existence before January 1, 2013, that contains more stringent provisions than this article shall be exempt from the requirements of this section. However, such provisions shall be reported to the Board at the time of the locality's VSMP approval package.

1989, cc. 467, 499, § 10.1-603.7; 1991, c. 84; 2004, c. 372; 2011, cc. 341, 353; 2012, cc. 785, 819; 2013, cc. 591, 756, 793; 2014, cc. 303, 598.

§ 62.1-44.15:33. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Authorization for more stringent ordinances.

A. Localities that are serving as VESMP authorities are authorized to adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of an MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice. This process shall not be required when a VESMP authority chooses to reduce the threshold for regulating land-disturbing activities to a smaller area of disturbed land pursuant to § 62.1-44.15:34. However, this section shall not be construed to authorize a VESMP authority to impose a more stringent timeframe for land-disturbance review and approval than those provided in this article.

B. Localities that are serving as VESMP authorities shall submit a letter report to the Department when more stringent stormwater management ordinances or more stringent requirements authorized by such stormwater management ordinances, such as may be set forth in design manuals, policies, or guidance documents developed by the localities, are determined to be necessary pursuant to this section within 30 days after adoption thereof. Any such letter report shall include a summary explanation as to why the more stringent ordinance or requirement has been determined to be necessary pursuant to this section. Upon the request of an affected landowner or his agent submitted to the Department with a copy to be sent to the locality, within 90 days after adoption of any such ordinance or derivative requirement, localities shall submit the ordinance or requirement and all other supporting materials to the Department for a determination of whether the requirements of this section have been met and whether any determination made by the locality pursuant to this section is supported by the evidence. The Department shall issue a written determination setting forth its rationale within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:

1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a VESMP authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.

2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90 days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure compliance with this section. Any such ordinance or other requirement that has been proposed but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.

E. Any provisions of a local erosion and sediment control or stormwater management program in existence before January 1, 2016, that contains more stringent provisions than this article shall be exempt from the requirements of this section if the locality chooses to retain such provisions when it becomes a VESMP authority. However, such provisions shall be reported to the Board at the time of submission of the locality's VESMP approval package.

1989, cc. 467, 499, § 10.1-603.7; 1991, c. 84; 2004, c. 372; 2011, cc. 341, 353; 2012, cc. 785, 819; 2013, cc. 591, 756, 793; 2014, cc. 303, 598; 2016, cc. 68, 758.

§ 62.1-44.15:34. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. A locality that is not a VSMP authority shall provide a general notice to applicants of the state permit coverage requirement and report all approvals pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) to begin land disturbance of one acre or greater to the Department at least monthly. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any permit application within 60 days after it has been determined by the VSMP authority to be a complete application. The VSMP authority may either issue project approval or denial and shall provide written rationale for the denial. The VSMP authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any approval, the VSMP authority may also require an applicant, excluding state and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VSMP authority, to ensure that measures could be taken by the VSMP authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions that may be required of him by the permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such action upon such failure by the applicant, the VSMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities until July 1, 2014, at which time it shall no longer be considered a small construction activity but shall be then regulated under the requirements of this article.

C. Notwithstanding any other provisions of this article, the following activities are exempt, unless otherwise required by federal law:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;

2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, localities subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences where land disturbance exceeds 2,500 square feet;

4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the governing body of any locality that administers a VSMP may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

5. Discharges to a sanitary sewer or a combined sewer system;

6. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity.

1989, cc. 467, 499, § 10.1-603.8; 1994, cc. 605, 898; 2004, c. 372; 2011, c. 400; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

§ 62.1-44.15:34. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 shall be submitted to the VESMP authority. Any VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in this article.

1. A VESMP authority that is implementing its program pursuant to subsection A of § 62.1-44.15:27 or subdivision B 1 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required. The VESMP authority also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

2. A VESMP authority implementing its program in coordination with the Department pursuant to subdivision B 2 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall forward a soil erosion control and stormwater management plan to the Department for review within five days of receipt. If the plan is incomplete, the Department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the Department shall review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority. The VESMP authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

The VESMP authority also shall forward to the Department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether

the plan is complete within 15 days of its receipt of the plan. The Department shall review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

3. When a state agency or federal entity submits a soil erosion control and stormwater management plan for a project, land disturbance shall not commence until the Board has reviewed and approved the plan and has issued permit coverage when it is required.

a. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

b. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

c. If onsite changes occur, the state agency or federal entity shall submit an amended soil erosion control and stormwater management plan to the Department.

d. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved plan. As necessary, the Board shall provide project oversight and enforcement.

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

B. The VESMP authority may require changes to an approved soil erosion control and stormwater management plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or

2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the VESMP authority and the owner.

C. In order to prevent further erosion, a VESMP authority may require approval of a soil erosion control and stormwater management plan for any land identified as an erosion impact area by the VESMP authority.

D. A VESMP authority may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

E. The following requirements shall apply to land-disturbing activities in the Commonwealth:

1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance may, in accordance with regulations adopted by the Board, be required to obtain permit coverage.

2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A. This subdivision shall also apply to additions or modifications to existing single-family detached residential structures.

b. Soil erosion control requirements and water quantity and water quality technical criteria shall apply to any activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

a. Soil erosion control and water quantity and water quality technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, other than a single-family detached residential structure. However, the governing body of any affected locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

b. For land-disturbing activities for single-family detached residential structures, soil erosion control and water quantity technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;

2. Installation, maintenance, or repair of any individual service connection;

3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;

6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

G. Notwithstanding any other provision of this article, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

1989, cc. 467, 499, § 10.1-603.8; 1994, cc. 605, 898; 2004, c. 372; 2011, c. 400; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2016, cc. 68, 758.

§ 62.1-44.15:35. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Nutrient credit use and additional offsite options for construction activities.

A. As used in this section:

"Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

"Tributary," within the Chesapeake Bay watershed, has the same meaning as in § 62.1-44.19:13. For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Virginia Stormwater Management Program Authority" or "VSMP authority" has the same meaning as in § 62.1-44.15:24 and includes, until July 1, 2014, any locality that has adopted a local stormwater management program.

B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28, in whole or in part, through the use of the applicant's acquisition of nutrient credits in the same tributary.

C. No applicant shall use nutrient credits to address water quantity control requirements. No applicant shall use nutrient credits or other offsite options in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

D. A VSMP authority shall allow offsite options in accordance with subsection I when:

1. Less than five acres of land will be disturbed;

2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or

3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met onsite. For purposes of this subdivision, if an applicant demonstrates onsite control of at least 75 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the requirements of clauses (i) through (iv).

E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP authority and the Department in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity. Until the effective date of regulations establishing application fees in accordance with § 62.1-44.19:20, the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid by the applicant for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

F. Nutrient credits used pursuant to subsection B shall be generated in the same or adjacent eight-digit hydrologic unit code as defined by the United States Geological Survey as the permitted site except as otherwise limited in subsection C. Nutrient credits outside the same or adjacent eight-digit hydrologic unit code may only be used if it is determined by the VSMP authority that no credits are available within the same or adjacent eight-digit hydrologic unit code when the VSMP authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, credits available within the same tributary may be used. In no case shall credits from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement being

met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available.

I. The VSMP authority shall require that nutrient credits and other offsite options approved by the Department or applicable state board, including locality pollutant loading pro rata share programs established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending July 1, 2014. The applicant shall have the right to select between the use of nutrient credits or other offsite options, except during the transition period in those localities to which the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same tributary within the same locality as the land-disturbing activity or for the acquisition of nutrient credits. In the case of a phased project, the applicant may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater Management Program Permit or Total Maximum Daily Load applicable to the location where the activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon determination by the VSMP authority that the conditions established by clause (i) or (ii) have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the Department may include the use of nutrient credits or other offsite measures in resolving enforcement actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

M. This section shall not be construed as limiting the authority established under § 15.2-2243; however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through nutrient credits or other offsite options.

N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant shall report to the Department, in accordance with Department procedures, information regarding all offsite reductions that have been authorized to meet stormwater postdevelopment nonpoint nutrient runoff compliance requirements.

O. An applicant or a permittee found to be in noncompliance with the requirements of this section shall be subject to the enforcement and penalty provisions of this article.

2009, c. 364, § 10.1-603.8:1; 2010, c. 686; 2011, c. 523; 2012, cc. 748, 785, 808, 819; 2013, cc. 756, 793; 2015, c. 164.

§ 62.1-44.15:35. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Nutrient credit use and additional offsite options for construction activities.

A. As used in this section:

"Nutrient credit" or "credit" means a type of offsite option that is a nutrient credit certified pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

"Offsite option" means an alternative available, away from the real property where land disturbance is occurring, to address water quality or water quantity technical criteria established pursuant to § 62.1-44.15:28.

"Tributary," within the Chesapeake Bay watershed, has the same meaning as in § 62.1-44.19:13. For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

B. No offsite option shall be used in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

C. Unless prohibited by subsection B, a VESMP authority or a VSMP authority:

1. May allow the use of offsite options for compliance with water quality and water quantity technical criteria established pursuant to § 62.1-44.15:28, in whole or in part; and

2. Shall allow the use of nutrient credits for compliance with the water quality technical criteria when:

a. Less than five acres of land will be disturbed;

b. The phosphorous water quality reduction requirement is less than 10 pounds per year; or

c. It is demonstrated to the satisfaction of the VESMP or VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) compliance with water quality technical criteria cannot practicably be met onsite. The requirements of clauses (i) through (iv) shall be deemed to have been met if it is demonstrated that onsite control of at least 75 percent of the required phosphorous water quality reduction will be achieved.

D. No VSMP or VESMP authority may grant an exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available.

E. The VSMP or VESMP authority shall require that offsite options approved by the Department or applicable state board achieve the necessary phosphorous water quality reductions prior to the commencement of the land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending July 1, 2014. In the case of a phased project, the land disturber may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase. The land disturber shall have the right to select between the use of nutrient credits or other offsite options, except during the transition period in those localities to which the transition period applies.

F. With the consent of the land disturber, in resolving enforcement actions, the VESMP authority or the Board may include the use of offsite options to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

G. This section shall not be construed as limiting the authority established under § 15.2-2243; however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through offsite options. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program for nutrient reductions in the same tributary within the same locality as the land-disturbing activity, or for the acquisition of nutrient credits.

H. Nutrient credits shall not be used to address water quantity technical criteria. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the land-disturbing activity. If no credits are available within these subbasins when the VESMP or VSMP authority accepts the final site design, credits available within the same tributary may be used. The following requirements apply to the use of nutrient credits:

1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP authority and the Department or the VSMP authority in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

2. Until the effective date of regulations establishing application fees in accordance with § 62.1-44.19:20, the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

3. For that portion of a site's compliance with water quality technical criteria being obtained through nutrient credits, the land disturber shall (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

4. A VESMP or VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon determination by the VESMP or VSMP authority that the conditions established by clause (i) or (ii) have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

I. The use of nutrient credits to meet post-construction nutrient control requirements shall be accounted for in the implementation of total maximum daily loads and MS4 permits as specified in subdivisions 1, 2, and 3. In order to ensure that the nutrient reduction benefits of nutrient credits used to meet post-construction nutrient control requirements are attributed to the location of the land-disturbing activity where the credit is used, the following account method shall be used:

1. Chesapeake Bay TMDL.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with the Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply.

c. A 1: 1 credit shall be applied toward compliance by a locality that operates a regulated MS4 with its Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § 62.1-44.19:13 independent of or in excess of those required to meet the post-construction requirements.

2. Local nutrient-related TMDLs adopted prior to the land-disturbing activity.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

c. A 1: 1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § 62.1-44.19:13 independent of or in excess of those required to meet the post-construction requirements. However, such credits shall be generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

3. Future local nutrient-related TMDLs.

This subdivision applies only to areas where there has been a documented prior use of nutrient credits to meet nutrient control requirements in an MS4 service area that flows to or is upstream of a water body segment for which a nutrient-related TMDL is being developed. For a TMDL waste load allocation applicable to the MS4, the Board shall develop the TMDL waste load allocation with the nutrient reduction benefits represented by the nutrient credit use being attributed to the MS4, except when the Board determines during the TMDL development process that reasonable assurance of implementation cannot be provided for nonpoint source load allocations due to the nutrient reduction benefits being attributed in this manner. The Board shall have no obligation to account for nutrient reduction benefits in this manner if the MS4 does not provide the Board with adequate documentation of (i) the location of the land-disturbing activities, (ii) the number of nutrient credits, and (iii) the generation of the nutrient credits upstream of the site at which the land-disturbing activity discharges to the water body segment addressed by the TMDL. Such attribution shall not be interpreted as amending

the requirement that the TMDL be established at a level necessary to meet the applicable water quality standard.

2009, c. 364, § 10.1-603.8:1; 2010, c. 686; 2011, c. 523; 2012, cc. 748, 785, 808, 819; 2013, cc. 756, 793; 2015, c. 164; 2016, cc. 68, 758.

§ 62.1-44.15:36. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 4.

§ 62.1-44.15:37. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, investigations, inspections, and stop work orders.

A. The VSMP authority (i) shall provide for periodic inspections of the installation of stormwater management measures, (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) shall conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. If the VSMP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by mailing with confirmation of delivery to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection B by the VSMP authority, where authorized to enforce this article, or by the Board, or the permit may be revoked by the VSMP authority, or the state permit may be revoked by the Board. The Board or the VSMP authority, where authorized to enforce this article, may pursue enforcement in accordance with § 62.1-44.15:48.

B. If a permittee fails to comply with a notice issued in accordance with subsection A within the time specified, the VSMP authority, where authorized to enforce this article, or the Department may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued (i) in accordance with local procedures if issued by a locality serving as a VSMP authority or (ii) after a hearing held in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) if issued by the Department. Such orders shall become effective upon service on the person by mailing, with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the VSMP authority or Department. However, if the VSMP authority or the Department finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water

quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

If a person who has been issued an order is not complying with the terms thereof, the VSMP authority or the Department may institute a proceeding in accordance with § 62.1-44.15:42.

1989, cc. 467, 499, § 10.1-603.11; 2004, c. 372; 2012, cc. 785, 819. 2013, cc. 756, 793.

§ 62.1-44.15:37. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Notices to comply and stop work orders.

A. When the VESMP authority or the Board determines that there is a failure to comply with the permit conditions or conditions of land-disturbance approval, or to obtain an approved plan, permit, or land-disturbance approval prior to commencing land-disturbing activities, the VESMP authority or the Board may serve a notice to comply upon the owner, permittee, or person conducting land-disturbing activities without an approved plan, permit, or approval. Such notice to comply shall be served by delivery by facsimile, email, or other technology; by mailing with confirmation of delivery to the address specified in the permit or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESMP authority by the permittee or owner. The notice to comply shall specify the measures needed to comply with the permit or land-disturbance approval conditions, or shall identify the plan approval or permit or land-disturbance approval needed to comply with this article, and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required permit or land-disturbance approval has not been obtained, the VESMP authority or the Board may require immediate compliance. In any other case, the VESMP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESMP authority or the Board may count any days of noncompliance as days of violation should the VESMP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § 2.2-4001.

B. Upon failure to comply within the time specified in a notice to comply issued in accordance with subsection A, a locality serving as the VESMP authority or the Board may issue a stop work order requiring the owner, permittee, or person conducting the land-disturbing activities without an approved plan or required permit or land-disturbance approval to cease all land-disturbing activities until the violation has ceased, or an approved plan and required permits and approvals are obtained, and specified corrective measures have been completed. The VESMP authority or the Board shall lift the order immediately upon completion and approval of corrective action or upon obtaining an approved plan or any required permits or approvals.

C. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.). Such orders shall become effective upon service on the person in the manner set forth in subsection A. However, where the alleged noncompliance is causing or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, the locality serving as the VESMP authority or the Board may issue, without advance notice or procedures, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

D. The owner, permittee, or person conducting a land-disturbing activity may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to occur or other appropriate court.

E. An aggrieved owner of property sustaining pecuniary damage from soil erosion or sediment deposition resulting from a violation of an approved plan or required land-disturbance approval, or from the conduct of a land-disturbing activity commenced without an approved plan or required land-disturbance approval, may give written notice of an alleged violation to the locality serving as the VESMP authority and to the Board.

1. If the VESMP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Board conduct an investigation and, if necessary, require the violator to stop the alleged violation and abate the damage to the property of the aggrieved owner.

2. Upon receipt of the request, the Board shall conduct an investigation of the aggrieved owner's complaint. If the Board's investigation of the complaint indicates that (i) there is a violation and the VESMP authority has not responded to the violation as required by the VESMP and (ii) the VESMP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days from receipt of the notice from the aggrieved owner, then the Board shall give written notice to the VESMP authority that the Board intends to issue an order pursuant to subdivision 3.

3. If the VESMP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Board, the Board is authorized to issue an order requiring the owner, person responsible for carrying out an approved plan, or person conducting the land-disturbing activity without an approved plan or required land-disturbance approval to cease all land-disturbing activities until the violation of the plan has ceased or an approved plan and required land-disturbance approval are obtained, as appropriate, and specified cor-

rective measures have been completed. The Board also may immediately initiate a program review of the VESMP.

4. Such orders are to be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.) and they shall become effective upon service on the person by mailing, with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Board. Any subsequent identical mail or notice that is sent by the Board may be sent by regular mail. However, if the Board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

5. If a person who has been issued an order or an emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty in accordance with the provisions of § 62.1-44.15:48. Any civil penalties assessed by a court shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

1989, cc. 467, 499, § 10.1-603.11; 2004, c. 372; 2012, cc. 785, 819. 2013, cc. 756, 793, 2016, cc. 68, 758.

§ 62.1-44.15:37.1. Inspections; land-disturbing activities of natural gas pipelines; stop work instructions.

A. The Department is authorized to conduct inspections of the land-disturbing activities of interstate and intrastate natural gas pipeline companies that have approved annual standards and specifications pursuant to § 62.1-44.15:31 as such land-disturbing activities relate to construction of any natural gas transmission pipeline greater than 36 inches inside diameter to determine (i) compliance with such annual standards and specifications, (ii) compliance with any site-specific plans, and (iii) if there have been or are likely to be adverse impacts to water quality as a result of such land-disturbing activities. When the Department determines that there has been a substantial adverse impact to water quality or that an imminent and substantial adverse impact to water quality is likely to occur as a result of such land-disturbing activities, the Department may issue a stop work instruction, without advance notice or hearing, requiring that all or part of such land-disturbing activities on the part of the site that caused the substantial adverse impacts to water quality or are likely to cause imminent and substantial adverse impacts to water quality be stopped until corrective measures specified in the stop work instruction have been completed and approved by the Department.

Such stop work instruction shall become effective upon service on the company by email or other technology agreed to in writing by the Department and the company, by mailing with confirmation of delivery to the address specified in the annual standards and specifications, if available, or by delivery at the site to a person previously identified to the Department by the company. Upon request by the company, the Director or his designee shall review such stop work instruction within 48 hours of issuance.

B. Within 10 business days of issuance of a stop work instruction, the Department shall promptly provide to such company an opportunity for an informal fact-finding proceeding concerning the stop work instruction and any review by the Director or his designee. Reasonable notice as to the time and place of the informal fact-finding proceeding shall be provided to such company. Within 10 business days of the informal fact-finding proceeding, the Department shall affirm, modify, amend, or cancel such stop work instruction. Upon written documentation from the company of the completion and approval by the Department in writing of the corrective measures specified in the stop work instruction, the instruction shall be immediately lifted.

C. The company may appeal such stop work instruction or preliminary decision rendered by the Director or his designee to the circuit court of the jurisdiction wherein the land-disturbing activities subject to the stop work instruction occurred, or to another appropriate court, in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.). Any person violating or failing, neglecting, or refusing to obey a stop work instruction issued by the Department may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Nothing in this section shall prevent the Board or the Department from taking any other action authorized by this chapter.

2018, c. 298.

§ 62.1-44.15:38. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Department to review VSMPs.

A. The Department shall develop and implement a review and evaluation schedule so that the effectiveness of each VSMP authority, Municipal Separate Storm Sewer System Management Program, and other MS4 permit requirements is evaluated no less than every five years. The review shall include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding. Such reviews shall be coordinated with those being implemented in accordance with the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations and, where applicable, the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and associated regulations.

B. Following completion of a compliance review of a VSMP, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If, after such a review and evaluation, a VSMP is found to have a program that does not comply with the provisions of this article or

regulations adopted thereunder, the Board shall establish a schedule for the VSMP authority to come into compliance. The Board shall provide a copy of its decision to the VSMP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the VSMP has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any VSMP imposing a civil penalty not to exceed $5,000 per day with the maximum amount not to exceed $20,000 per violation for noncompliance with the requirements of this article and its regulations, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or (ii) revoke its approval of the VSMP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

If the Board revokes its approval of a VSMP, the Board shall find the VSMP authority provisional and shall have the Department assist with the administration of the program until the VSMP authority is deemed compliant with the requirements of this article and associated regulations. Assisting with administration includes the ability to review and comment on plans to the VSMP authority, to conduct inspections with the VSMP authority, and to conduct enforcement in accordance with this article and associated regulations.

In lieu of issuing a special order or revoking the program, the Board may take legal action against a VSMP pursuant to § 62.1-44.15:48 to ensure compliance.

1989, cc. 467, 499, § 10.1-603.12; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:39. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Right of entry.

The Department, the VSMP authority, where authorized to enforce this article, any duly authorized agent of the Department or VSMP authority, or any locality that is the operator of a regulated municipal separate storm sewer system 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 article. For operators of municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VSMP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

2004, c. 372, § 10.1-603.12:1; 2011, c. 453; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:39. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Right of entry.

In addition to the Board's authority set forth in § 62.1-44.20, a locality serving as a VESMP authority or any duly authorized agent thereof 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 article. For localities that operate regulated municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESMP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the VESMP authority on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

2004, c. 372, § 10.1-603.12:1; 2011, c. 453; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:40. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Information to be furnished.

The Board, the Department, or the VSMP authority, where authorized to enforce this article, may require every permit applicant, every permittee, or any person subject to state permit requirements under this article to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, disclosure of records of the Department, the Board, or the VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any permittee or under that permittee's direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Department, the Board, or the VSMP authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

2004, c. 372, § 10.1-603.12:2; 2005, c. 102; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:40. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Information to be furnished.

The Board, the Department, or a locality serving as a VESMP authority may require every owner, including every applicant for a permit or land-disturbance approval, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. The Board or Department also may require any locality that is a VESMP authority to furnish when requested any information as may be required to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or VESMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, disclosure of records of the Department, the Board, or the VESMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Board or the locality serving as a VESMP authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

2004, c. 372, § 10.1-603.12:2; 2005, c. 102; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:41. (For expiration date – see notes) Private rights; liability.

A. Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity that maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § 54.1-2345.

B. Except as provided in subsection A, the fact that any permittee holds or has held a permit or state permit issued under this article shall not constitute a defense in any civil action involving private rights.

2004, c. 372, § 10.1-603.12:3; 2010, c. 853; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:41. (For effective date – see notes) Liability of common interest communities.

Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity that maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § 54.1-2345.

2004, c. 372, § 10.1-603.12:3; 2010, c. 853; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:42. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Enforcement by injunction, etc.

A. It is unlawful for any person to fail to comply with any stop work order, emergency order issued in accordance with § 62.1-44.15:37, or a special order or emergency special order issued in accordance with § 62.1-44.15:25 that has become final under the provisions of this article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and specification, order, or permit condition issued by the Board, Department, or VSMP authority as authorized to do such, or any provisions of this article, may be compelled in a proceeding instituted in any appropriate court by the Board, Department, or VSMP authority where authorized to enforce this article to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.

B. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty in accordance with the provisions of § 62.1-44.15:48.

2004, c. 372, § 10.1-603.12:4; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:43. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Testing validity of regulations; judicial review.

A. The validity of any regulation adopted by the Board pursuant to this article may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

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

2004, c. 372, § 10.1-603.12:5; 2013, cc. 756, 793.

§ 62.1-44.15:44. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Right to hearing.

Any permit applicant, permittee, or person subject to state permit requirements under this article aggrieved by any action of the Department or Board taken without a formal hearing, or by inaction of the Department or Board, may demand in writing a formal hearing by the Board, provided a petition requesting such hearing is filed with the Board within 30 days after notice of such action.

2004, c. 372, § 10.1-603.12:6; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

§ 62.1-44.15:45. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Hearings.

When holding hearings under this article, the Board shall do so in a manner consistent with § 62.1-44.26. A locality holding hearings under this article shall do so in a manner consistent with local hearing procedures.

2004, c. 372, § 10.1-603.12:7; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

§ 62.1-44.15:46. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Appeals.

Any permittee or party aggrieved by a state permit or enforcement decision of the Department or Board under this article, 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 Department or Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the Constitution of the United States. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury that is an invasion of a legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Department or 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.

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in §

2.2-4027, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this article.

1989, cc. 467, 499, § 10.1-603.13; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

§ 62.1-44.15:46. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Appeals.

Any permittee or party aggrieved by (i) a permit or permit enforcement decision of the Board under this article or (ii) a decision of the Board under this article concerning a land-disturbing activity in a locality subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), or any person who has participated, in person or by submittal of written comments, in the public comment process related to such decision of the Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with § 62.1-44.29. Appeals of other final decisions of the Board under this article shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

A final decision by a locality, when serving as a VESMP authority, shall be subject to judicial review, provided that an appeal is filed in the appropriate court within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in a land-disturbing activity.

1989, cc. 467, 499, § 10.1-603.13; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598; 2016, cc. 68, 758.

§ 62.1-44.15:47. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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.

2004, c. 372, § 10.1-603.13:1; 2013, cc. 756, 793.

§ 62.1-44.15:48. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties, injunctions, and other legal actions.

A. Any person who violates any provision of this article or of any regulation, ordinance, or standard and specification adopted or approved hereunder, including those adopted pursuant to the conditions of an MS4 permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued as herein provided, shall be subject to a civil penalty not to exceed $32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the VSMP authority in enforcing the provisions of this article. The Board, Department, or VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. Any civil penalties assessed by a court as a result of a summons issued by a locality as an approved

VSMP authority shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, any order of a VSMP authority authorized to enforce this article or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than $2,500 nor more than $32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, any order of the VSMP authority or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state 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 article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, 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 12 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 article, 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 15 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 million 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. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the VSMP authority, where authorized to enforce this article, may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected, or refused to obey any ordinance, any condition of a permit or state permit, any regulation or order of the Board, any order of the VSMP authority or the Department, or any provision of this article, the Board, Department, or VSMP authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A.

1989, cc. 467, 499, § 10.1-603.14; 2004, c. 372; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:48. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties, injunctions, and other legal actions.

A. For a land-disturbing activity that disturbs 2,500 square feet or more of land in an area of a locality that is designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), or that disturbs one acre or more of land or is part of a larger common plan of development or sale that disturbs one acre or more of land anywhere else in the Commonwealth:

1. Any person who violates any applicable provision of this article or of any regulation, permit, or standard and specification adopted or approved by the Board hereunder, or who fails, neglects, or refuses to comply with any order of the Board, or a court, issued as herein provided, shall be subject to a civil penalty pursuant to § 62.1-44.32. The court shall direct that any penalty be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

2. Any person who violates any applicable provision of this article, or any ordinance adopted pursuant to this article, including those adopted pursuant to the conditions of an MS4 permit, or any condition of a local land-disturbance approval, or who fails, neglects, or refuses to comply with any order of a locality serving as a VESMP authority or a court, issued as herein provided, shall be subject to a civil penalty not to exceed $32,500 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 treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.

Where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

B. For a land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area that is not designated as a Chesapeake Bay Preservation Area pursuant

to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and is not part of a larger common plan of development or sale that disturbs one acre or more of land:

1. Any person who violates any applicable provision of this article or of any regulation or order of the Board issued pursuant to this article, or any condition of a land-disturbance approval issued by the Board, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed $5,000 for each violation with a limit of $50,000 within the discretion of the court in a civil action initiated by the Board. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of $50,000. The court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

2. Any locality serving as a VESMP authority shall adopt an ordinance providing that a violation of any ordinance or provision of its program adopted pursuant to this article, or any condition of a land-disturbance approval, shall be subject to a civil penalty. Such ordinance shall provide that any person who violates any applicable provision of this article or any ordinance or order of a locality issued pursuant to this article, or any condition of a land-disturbance approval issued by the locality, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed $5,000 for each violation with a limit of $50,000 within the discretion of the court in a civil action initiated by the locality. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of $50,000. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and used pursuant to subdivision A 2, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

C. The violation of any provision of this article may also result in the following sanctions:

1. The Board may seek an injunction, mandamus, or other appropriate remedy pursuant to § 62.1-44.23. A locality serving as a VESMP authority may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of a local ordinance or order or the conditions of a local land-disturbance approval. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this article shall be subject, in the discretion of the court, to a civil penalty that shall be assessed and used in accordance with the provisions of subsection A or B, as applicable.

2. The Board or a locality serving as a VESMP authority may use the criminal provisions provided in § 62.1-44.32.

1989, cc. 467, 499, § 10.1-603.14; 2004, c. 372; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:49. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Enforcement authority of MS4 localities.

A. Localities shall adopt a stormwater ordinance pursuant to the conditions of a MS4 permit that is consistent with this article and its associated regulations and that contains provisions including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities and shall include additional provisions as required to comply with a state MS4 permit. Such locality may utilize the civil penalty provisions in subsection A of § 62.1-44.15:48, the injunctive authority as provided for in subdivision D 1 of § 62.1-44.15:48, and the civil charges as authorized in subdivision D 2 of § 62.1-44.15:48, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

B. Any person who willfully and knowingly violates any provision of such an ordinance is guilty of a Class 1 misdemeanor.

C. The local ordinance authorized by this section shall remain in full force and effect until the locality has been approved as a VSMP authority.

2008, c. 13, § 10.1-603.14 :1; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:49.1. MS4 industrial and high-risk programs.

A. Any locality that owns or operates a municipal separate storm sewer system that is subject to a discharge permit issued pursuant to this chapter shall have the authority to adopt and administer an industrial and high-risk runoff program for industrial and commercial facilities as part of its municipal separate storm sewer system management program.

B. The Board shall not delegate to the locality the Board's authority or responsibilities under the federal Clean Water Act (33 U.S.C. § 1251 et seq.) as to such industrial and commercial facilities.

C. Unless it is required to do so by the adoption on or after January 1, 2018, of a federal regulation or an amendment to the federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Board shall not impose upon the locality, by permit issuance or reissuance, any municipal separate storm sewer system permit condition requiring that (i) an industrial or commercial facility also subject to a permit issued by the Board under this chapter be included in the locality's industrial and high-risk runoff program, (ii) any state discharge monitoring reports or other required reports submitted by such a facility to the Department also be reviewed or enforced by the locality, or (iii) the locality impose additional monitoring requirements on a facility that exceed or conflict with the requirements of any permit issued by the Board under this chapter. The limitation contained in this subsection shall not be cause for the Board or the locality to initiate a major or minor modification of any municipal separate storm sewer system permit that is in effect as of January 1, 2018, during the term of that permit.

D. Notwithstanding the provisions of this section, the Board may, through a municipal separate storm sewer system permit that is issued to the locality, require a locality to refer any industrial or commercial facility to the Board or the Department if the locality becomes aware of a violation of any

industrial stormwater management requirement contained in an individual or general Virginia Pollutant Discharge Elimination System permit issued to the facility pursuant to this chapter.

2018, c. 152.

§ 62.1-44.15:49. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Enforcement authority of MS4 localities.

Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal separate storm sewer system management program that is consistent with this chapter and that contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil penalty provisions in subdivision A 2 of § 62.1-44.15:48, the injunctive authority as provided for in subsection C of § 62.1-44.15:48, the civil charges as authorized in § 62.1-44.15:25.1, and the criminal provisions in § 62.1-44.32, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

2008, c. 13, § 10.1-603.14 :1; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:50. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Cooperation with federal and state agencies.

A VSMP authority and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities for stormwater management.

1989, cc. 467, 499, § 10.1-603.15; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:50. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Cooperation with federal and state agencies.

A VESMP authority and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities.

1989, cc. 467, 499, § 10.1-603.15; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

Article 2.4 - EROSION AND SEDIMENT CONTROL LAW

§ 62.1-44.15:51. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

"Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

"Erosion and sediment control plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity" means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

2. Individual service connections;

3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;

6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and

12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity

were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Permittee" means the person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

1973, c. 486, § 21-89.3; 1974, c. 265; 1977, c. 149; 1980, c. 305; 1988, cc. 690, 732, 891, § 10.1-560; 1990, c. 491; 1991, c. 469; 1992, c. 184; 1993, c. 925; 1994, c. 703; 2003, c. 423; 2004, c. 476; 2005, c. 107; 2006, c. 21; 2009, c. 309; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:51. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family detached residential structure; this contract may be executed by the VESCP authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certification from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a certification from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

"Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a certification from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

"Erosion and sediment control plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land disturbance" or "land-disturbing activity" means any man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the same as provided in § 62.1-44.3. For a land-disturbing activity that is regulated under this article, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of this article.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality approved by the Board to operate a Virginia Erosion and Sediment Control Program. A locality that

has chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3 of § 62.1-44.15:27 is required to become a VESCP authority in accordance with this article.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

1973, c. 486, § 21-89.3; 1974, c. 265; 1977, c. 149; 1980, c. 305; 1988, cc. 690, 732, 891, § 10.1-560; 1990, c. 491; 1991, c. 469; 1992, c. 184; 1993, c. 925; 1994, c. 703; 2003, c. 423; 2004, c. 476; 2005, c. 107; 2006, c. 21; 2009, c. 309; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:51.1. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Applicability.

The requirements of this article shall apply in any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § 62.1-44.15:27. Each such locality shall be required to adopt and administer a Board-approved VESCP.

2016, cc. 68, 758.

§ 62.1-44.15:52. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Erosion and Sediment Control Program.

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § 62.1-44.15:54 or 62.1-44.15:65. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirement for natural or man-made channels as defined in regulations promulgated pursuant to § 62.1-44.15:54 or 62.1-44.15:65. For plans approved on and after July 1, 2014, the flow rate

capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities (a) are in accordance with the grandfathering or time limits on applicability of approved design criteria provisions of the Virginia Stormwater Management Program (VSMP) Regulations, in which case the flow rate capacity and velocity requirements of this subsection shall apply, or (b) are exempt pursuant to subdivision C 7 of § 62.1-44.15:34.

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for VESCP authorities.

C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of VESCPs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A are based.

D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation to ensure that all VESCPs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition, and nonagricultural runoff. The Department shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of VESCPs unless otherwise directed by the Board. Such reviews where applicable shall be coordinated with those being implemented in accordance with the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations and the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and associated regulations. The Department may also conduct a comprehensive or partial program compliance review and evaluation of a VESCP at a greater frequency than the standard schedule.

E. The Board shall issue certificates of competence concerning the content, application, and intent of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other

persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this article and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs. Such education and training programs shall also contain expanded components to address plan review and project inspection elements of the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations in accordance with § 62.1-44.15:30.

F. Department personnel conducting inspections pursuant to this article shall hold a certificate of competence as provided in subsection E.

1973, c. 486, § 21-89.4; 1988, cc. 732, 891, § 10.1-561; 1993, c. 925; 2004, c. 431; 2005, c. 107; 2006, c. 21; 2012, cc. 785, 819; 2013, cc. 756, 793; 2015, c. 497; 2016, c. 66.

§ 62.1-44.15:52. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Erosion and Sediment Control Program.

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § 62.1-44.15:54 or 62.1-44.15:65. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirement for natural or man-made channels as defined in regulations promulgated pursuant to § 62.1-44.15:54 or 62.1-44.15:65. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Virginia Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations unless such land-disturbing activities (a) are in accordance with the grandfathering or time limits on applicability of approved design criteria provisions of the Virginia Erosion and Stormwater Management Program (VESMP) Regulations, in which case the flow rate

capacity and velocity requirements of this subsection shall apply, or (b) are exempt pursuant to subdivision G 2 of § 62.1-44.15:34.

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for VESCP authorities.

C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of VESCPs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A are based.

D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation pursuant to subdivision (19) of § 62.1-44.15.

E. The Board shall issue certifications concerning the content, application, and intent of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this article and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs. Such education and training programs shall also contain expanded components to address plan review and project inspection elements of the Virginia Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq.) in accordance with § 62.1-44.15:30.

F. Department personnel conducting inspections pursuant to this article shall hold a certification as provided in subsection E.

1973, c. 486, § 21-89.4; 1988, cc. 732, 891, § 10.1-561; 1993, c. 925; 2004, c. 431; 2005, c. 107; 2006, c. 21; 2012, cc. 785, 819; 2013, cc. 756, 793; 2015, c. 497; 2016, cc. 66, 68, 758.

§ 62.1-44.15:53. Certification of program personnel.

A. The minimum standards of VESCP effectiveness established by the Board pursuant to subsection C of § 62.1-44.15:52 shall provide that (i) an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.

B. Any person who holds a certificate of competence from the Board in the area of plan review, project inspection, or program administration that was attained prior to the adoption of the mandatory certification provisions of subsection A shall be deemed to satisfy the requirements of that area of certification.

C. (For expiration date -- see note) Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in § 54.1-2200 shall be deemed to satisfy the certification requirements for the purposes of renewals.

C. (For effective date -- see notes) Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in § 54.1-2200 shall be deemed to have met the provisions of this section for the purposes of renewals of certifications.

1993, c. 925, § 10.1-561.1; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:54. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Establishment of Virginia Erosion and Sediment Control Program.

A. Counties and cities shall adopt and administer a VESCP.

Any town lying within a county that has adopted its own VESCP may adopt its own program or shall become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement where authorized in this article, of such land-disturbing activities.

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of

inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a VESCP consistent with the requirements of this article and its associated regulations and the VESCP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

F. Following completion of a compliance review of a VESCP in accordance with subsection D of § 62.1-44.15:52, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If a comprehensive or partial program compliance review conducted by the Department of a VESCP indicates that the VESCP authority has not administered, enforced where authorized to do so, or conducted its VESCP in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection C of § 62.1-44.15:52, the Board shall establish a schedule for the VESCP authority to come into compliance. The Board shall provide a copy of its decision to the VESCP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the VESCP authority has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any VESCP, imposing a civil penalty not to exceed $5,000 per day with the maximum amount not to exceed $20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board and the judicial review thereof.

In lieu of issuing a special order or revoking the program, the Board is authorized to take legal action against a VESCP to ensure compliance.

G. If the Board revokes its approval of the VESCP of a county, city, or town, and the locality is in a district, the district, upon approval of the Board, shall adopt and administer a VESCP for the locality. To carry out its program, the district shall adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) consistent with this article and associated regulations. The regulations may be revised from time to time as necessary. The program and regulations shall be available for public inspection at the principal office of the district.

H. If the Board (i) revokes its approval of a VESCP of a district, or of a county, city, or town not in a district, or (ii) finds that a local program consistent with this article and associated regulations has not been adopted by a district or a county, city, or town that is required to adopt and administer a VESCP, the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations. "Assisting with administration" includes but is not limited to the ability to review and comment on plans to the VESCP authority, to conduct inspections with the VESCP authority, and to conduct enforcement in accordance with this article and associated regulations.

I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102, the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations. "Assisting with administration" includes the ability to review and comment on plans to the VESCP authority and to conduct inspections with the VESCP authority in accordance with this article and associated regulations.

J. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to any fee charged for administration of a Virginia Stormwater Management Program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

K. The governing body of any county, city, or town, or a district board that is authorized to administer a VESCP, may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than $100 nor more than $1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of $10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of $10,000. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.15:63. The penalties set out in this subsection are also available to the Board in its enforcement actions.

1973, c. 486, § 21-89.5; 1976, c. 653; 1978, c. 450; 1980, c. 35; 1983, c. 189; 1988, cc. 732, 891, § 10.1-562; 1992, c. 298; 1993, c. 925; 2005, c. 129; 2007, cc. 51, 204; 2010, c. 275; 2012, cc. 785, 819.2013, cc. 756, 793.

§ 62.1-44.15:54. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Erosion and Sediment Control Program.

A. Any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § 62.1-44.15:27 shall administer a VESCP in accordance with this article; however, a town may enter into an agreement with a county to administer the town's VESCP pursuant to subsection C of § 62.1-44.15:27.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the coordination of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board shall conduct compliance reviews of VESCPs in accordance with subdivision (19) of § 62.1-44.15. The Board or Department also may require any locality that is a VESCP authority to furnish when requested any information as may be required to accomplish the purposes of this article.

F. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

G. Any locality that is authorized to administer a VESCP may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a land-disturbance approval, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than $100 nor more than $1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of $10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil

penalties that exceed a total of $10,000. The penalties set out in this subsection are also available to the Board in its enforcement actions.

1973, c. 486, § 21-89.5; 1976, c. 653; 1978, c. 450; 1980, c. 35; 1983, c. 189; 1988, cc. 732, 891, § 10.1-562; 1992, c. 298; 1993, c. 925; 2005, c. 129; 2007, cc. 51, 204; 2010, c. 275; 2012, cc. 785, 819.2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:55. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or part of the administrative procedures. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the

approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or

2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file general erosion and sediment control standards and specifications annually with the Department for review and approval. Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations where applicable. The specifications shall apply to:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of the railroad company.

The Department shall have 60 days in which to approve the standards and specifications. If no action is taken by the Department within 60 days, the standards and specifications shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 shall comply with the requirements of the appropriate VESCP. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance.

E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland mitigation or stream restoration bank or banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and

operation of (i) wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may, at the option of that person, file general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with the Department for review and approval consistent with guidelines established by the Board.

The Department shall have 60 days in which to approve the specifications. If no action is taken by the Department within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, projection inspections, and compliance. Approval of general erosion and sediment control specifications by the Department does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

F. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

G. For the purposes of subsections A and B, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

1973, c. 486, § 21-89.6; 1979, c. 432; 1988, cc. 732, 891, § 10.1-563; 1993, c. 925; 1999, c. 555; 2001, c. 490; 2003, cc. 827, 966; 2006, c. 466; 2008, c. 23; 2011, cc. 720, 721; 2012, cc. 785, 819; 2013, cc. 756, 793; 2018, c. 627.

§ 62.1-44.15:55. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination System permit coverage is required, a VESCP authority shall be required to obtain evidence of such coverage from the Department's online reporting system prior to approving the erosion and sediment control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to

such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or

2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

E. For the purposes of subsections A and B, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;

4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;

7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such

situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

1973, c. 486, § 21-89.6; 1979, c. 432; 1988, cc. 732, 891, § 10.1-563; 1993, c. 925; 1999, c. 555; 2001, c. 490; 2003, cc. 827, 966; 2006, c. 466; 2008, c. 23; 2011, cc. 720, 721; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:56. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) State agency and federal entity projects.

A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities that have been reviewed and approved by the Department as being consistent with this article and associated regulations or (ii) the state agency has submitted an erosion and sediment control plan for the project that has been reviewed and approved by the Department. When a federal entity submits an erosion and sediment control plan for a project, land disturbance shall not commence until the Department has reviewed and approved the plan.

B. The Department shall not approve an erosion and sediment control plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the erosion and sediment control plan is consistent with the requirements of the state program.

C. The Department shall not approve an erosion and sediment control plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program unless the erosion and sediment control plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the Department, the provisions of subsection B shall apply.

D. The Department shall have 60 days in which to comment on any standards and specifications or erosion and sediment control plan submitted to it for review, and its comments shall be binding on the state agency and any private business hired by the state agency.

E. As onsite changes occur, the state agency shall submit changes in an erosion and sediment control plan to the Department.

F. The state agency responsible for the land-disturbing activity shall ensure compliance with an approved plan, and the Department and Board, where applicable, shall provide project oversight and enforcement as necessary.

G. If the state agency or federal entity has developed, and the Department has approved, annual standards and specifications, and the state agency or federal entity has been approved by the Board to operate a VESCP as a VESCP authority, erosion and sediment control plan review and approval and land-disturbing activity inspections shall be conducted by such entity. The Department and the Board, where applicable, shall provide project oversight and enforcement as necessary and comprehensive program compliance review and evaluation. Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations when applicable.

1973, c. 486, § 21-89.6; 1979, c. 432; 1988, c. 891, § 10.1-564; 1993, c. 925; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:56.1. Department acceptance of plans in lieu of plan review.

A. Notwithstanding any other provision of this article, the Department, when administering a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.), may choose to accept a set of plans and supporting calculations for any land-disturbing activity determined to be de minimis using a risk-based approach established by the Board.

B. The Department is authorized to accept such plans and supporting calculations in satisfaction of the requirement of this article that it retain a certified plan reviewer or conduct a plan review. This section shall not excuse any applicable performance bond requirement pursuant to § 62.1-44.15:57.

2020, c. 812.

§ 62.1-44.15:57. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Approved plan required for issuance of grading, building, or other permits; security for performance.

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities regulated under this article shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed and, upon the development of an online reporting system by the Department but no later than July 1, 2014, evidence of Virginia Stormwater Management Program permit coverage where it is required. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action that may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate

conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

1973, c. 486, § 21-89.7; 1980, c. 35; 1988, cc. 694, 891, § 10.1-565; 1996, c. 275; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:57. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Approved plan required for issuance of grading, building, or other permits; security for performance.

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities regulated under this article shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed, and evidence of Virginia Pollutant Discharge Elimination System permit coverage where it is required. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action that may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

1973, c. 486, § 21-89.7; 1980, c. 35; 1988, cc. 694, 891, § 10.1-565; 1996, c. 275; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:58. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate of competence, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the VESCP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the plan following an inspection, notice shall be served upon the permittee or person responsible for carrying out the plan by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the VESCP authority, where authorized to enforce this article, the Department, or the Board may pursue enforcement as provided by § 62.1-44.15:63.

B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of this article, including but not limited to the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and enforcement where an authority is granted such powers by this article.

C. Upon issuance of an inspection report denoting a violation of this section, § 62.1-44.15:55 or 62.1-44.15:56, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority, where authorized to enforce this article, or the Department may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator

has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Department, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The order for disturbance without an approved plan or permits shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan or any required permit within seven days from the date of service of the order, the Department or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan and any required permits have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

1973, c. 486, § 21-89.8; 1986, c. 328; 1988, cc. 694, 891, § 10.1-566; 1992, c. 298; 1993, c. 925; 2001, c. 490; 2003, c. 827; 2012, cc. 249, 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:58. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § 62.1-44.15:52, will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. The owner shall be given notice of the inspection. When the VESCP authority or the Board determines that there is a failure to comply with the conditions of land-disturbance approval or to

obtain an approved plan or a land-disturbance approval prior to commencing land-disturbing activity, the VESCP authority or the Board may serve a notice to comply upon the owner or person responsible for carrying out the land-disturbing activity. Such notice to comply shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the plan or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESCP authority by the owner. The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required land-disturbance approval has not been obtained, the VESCP authority or the Board may require immediate compliance. In any other case, the VESCP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESCP authority or the Board may count any days of noncompliance as days of violation should the VESCP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § 2.2-4001. Upon failure to comply within the time specified, any plan approval or land-disturbance approval may be revoked and the VESCP authority or the Board may pursue enforcement as provided by § 62.1-44.15:63.

B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of this article, including but not limited to the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and enforcement.

C. Upon issuance of an inspection report denoting a violation of this section or § 62.1-44.15:55, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority or the Board may issue a stop work order requiring that all or part of the land-disturbing activities on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan is obtained. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.). Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan, such a stop work order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Board,

or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The stop work order for disturbance without an approved plan shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan within seven days from the date of service of the stop work order, the Board or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan has been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Board or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted. Nothing in this section shall prevent the Board or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

1973, c. 486, § 21-89.8; 1986, c. 328; 1988, cc. 694, 891, § 10.1-566; 1992, c. 298; 1993, c. 925; 2001, c. 490; 2003, c. 827; 2012, cc. 249, 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:58.1. Inspections; land-disturbing activities of natural gas pipelines; stop work instructions.

A. The Department is authorized to conduct inspections of the land-disturbing activities of interstate and intrastate natural gas pipeline companies that have approved annual standards and specifications pursuant to § 62.1-44.15:55 as such land-disturbing activities relate to construction of any natural gas transmission pipeline greater than 36 inches inside diameter to determine (i) compliance with such annual standards and specifications, (ii) compliance with any site-specific plans, and (iii) if there have been or are likely to be adverse impacts to water quality as a result of such land-disturbing activities. When the Department determines that there has been a substantial adverse impact to water quality or that an imminent and substantial adverse impact to water quality is likely to occur as a result of such land-disturbing activities, the Department may issue a stop work instruction, without advance notice or hearing, requiring that all or part of such land-disturbing activities on the part of the site that caused the substantial adverse impacts to water quality or are likely to cause imminent and substantial adverse impacts to water quality be stopped until corrective measures specified in the stop work instruction have been completed and approved by the Department.

Such stop work instruction shall become effective upon service on the company by email or other technology agreed to in writing by the Department and the company, by mailing with confirmation of delivery to the address specified in the annual standards and specifications, if available, or by delivery at the site to a person previously identified to the Department by the company. Upon request by the company, the Director or his designee shall review such stop work instruction within 48 hours of issuance.

B. Within 10 business days of issuance of a stop work instruction, the Department shall promptly provide to such company an opportunity for an informal fact-finding proceeding concerning the stop work instruction and any review by the Director or his designee. Reasonable notice as to the time and place of the informal fact-finding proceeding shall be provided to such company. Within 10 business days of the informal fact-finding proceeding, the Department shall affirm, modify, amend, or cancel such stop work instruction. Upon written documentation from the company of the completion and approval by the Department in writing of the corrective measures specified in the stop work instruction, the instruction shall be immediately lifted.

C. The company may appeal such stop work instruction or preliminary decision rendered by the Director or his designee to the circuit court of the jurisdiction wherein the land-disturbing activities subject to the stop work instruction occurred, or to another appropriate court, in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.). Any person violating or failing, neglecting, or refusing to obey a stop work instruction issued by the Department may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Nothing in this section shall prevent the Board or the Department from taking any other action authorized by this chapter.

2018, c. 297.

§ 62.1-44.15:59. Reporting.

Each VESCP authority shall report to the Department, in a method such as an online reporting system and on a time schedule established by the Department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP under this article.

2005, c. 102, § 10.1-566.1; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:60. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Right of entry.

The Department, the VESCP authority, where authorized to enforce this article, or any duly authorized agent of the Department or such VESCP authority 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 article.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or

upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

2012, cc. 785, 819, § 10.1-566.2; 2013, cc. 756, 793.

§ 62.1-44.15:60. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Right of entry.

In addition to the Board's authority set forth in § 62.1-44.20, a locality serving as a VESCP authority or any duly authorized agent thereof 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 article.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the conditions imposed by the VESCP authority on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

2012, cc. 785, 819, § 10.1-566.2; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:61. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Cooperation with federal and state agencies.

A VESCP authority and the Board are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for erosion and sediment control with respect to land-disturbing activities.

1973, c. 486, § 21-89.9; 1988, c. 891, § 10.1-567; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:62. Judicial appeals.

A. A final decision by a county, city, or town, when serving as a VESCP authority under this article, shall be subject to judicial review, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

B. (For expiration date -- see notes) Final decisions of the Board, Department, or district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. (For effective date -- see notes) Final decisions of the Board shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1973, c. 486, § 21-89.10; 1986, c. 615; 1988, c. 891, § 10.1-568; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:63. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties, injunctions and other legal actions.

A. Violators of § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 shall be guilty of a Class 1 misdemeanor.

B. Any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit, or any provision of this article or associated regulation shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality or district serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection K of § 62.1-44.15:54, such assessment shall be in accordance with the schedule. The VESCP authority or the Department may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the locality or Department to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or where the Department is issuing the summons, the court shall direct the penalty to be paid into the state treasury.

C. The VESCP authority, the Department, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the VESCP, the Department, and the VESCP authority that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, the Department, nor the VESCP authority has taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to his property.

D. In addition to any criminal or civil penalties provided under this article, any person who violates any provision of this article may be liable to the VESCP authority or the Department, as appropriate, in a civil action for damages.

E. Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or the Department. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or other VESCP authority, or where the penalties are assessed as the result of an enforcement action brought by the Department, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit, or any provision of this article or associated regulations, the Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection B or E.

G. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Department, or the district, the Attorney General shall take appropriate legal action on behalf of the Board, the Department, or the district to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

1973, c. 486, § 21-89.11; 1988, cc. 694, 891, § 10.1-569; 1992, c. 298; 1993, c. 925; 1995, c. 832; 1996, c. 518; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:63. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties, injunctions and other legal actions.

A. Any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the VESCP authority, any condition of a land-disturbance approval, or any provision of this article or associated regulation shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection G of § 62.1-44.15:54, such assessment shall be in accordance with the schedule. The VESCP authority or the Board may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the Board or the VESCP authority to show the liability of the violator by a preponderance of the evidence. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration. Where the violator is the locality itself, or its agent, or where the Board is issuing the summons, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

B. The VESCP authority, the Board, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under § 62.1-44.15:55 or

62.1-44.15:58 without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the VESCP, the Board, and the VESCP authority that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, the Board, nor the VESCP authority has taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to his property.

C. In addition to any civil penalties provided under this article, any person who violates any provision of this article may be liable to the VESCP authority or the Board, as appropriate, in a civil action for damages.

D. Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or the Board. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and used pursuant to requirements of subsection A. Where the violator is the locality itself, or its agent, or where the penalties are assessed as the result of an enforcement action brought by the Board, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund (§ 62.1-44.15:29.1).

E. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the VESCP authority, any condition of a land-disturbance approval, or any provision of this article or associated regulations, the Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection D. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection A or D.

F. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.

1973, c. 486, § 21-89.11; 1988, cc. 694, 891, § 10.1-569; 1992, c. 298; 1993, c. 925; 1995, c. 832; 1996, c. 518; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:64. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Stop work orders by Department; civil penalties.

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved erosion and sediment control plan or required permit, or from the conduct of land-disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the VESCP authority and to the Director.

B. Upon receipt of the notice from the aggrieved owner and notification to the VESCP authority, the Director shall conduct an investigation of the aggrieved owner's complaint.

C. If the VESCP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Director require the violator to stop the violation and abate the damage to his property.

D. If (i) the Director's investigation of the complaint indicates that the VESCP authority has not responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not responded to the alleged violation within 30 days from the date of the notice given pursuant to subsection A, and (iii) the Director is requested by the aggrieved owner to require the violator to cease the violation, then the Director shall give written notice to the VESCP authority that the Department intends to issue an order pursuant to subsection E.

E. If the VESCP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Director, the Department is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the plan or permit has ceased or an approved plan and required permits are obtained, as appropriate, and specified corrective measures have been completed. The Department also may immediately initiate a program review of the VESCP.

F. Such orders are to be issued after a hearing held in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), and they shall become effective upon service on the person by mailing with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Director. Any subsequent identical mail or notice that is sent by the Department may be sent by regular mail. However, if the Department finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

G. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

H. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil pen-

alty not to exceed $2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury.

1993, c. 925, § 10.1-569.1; 2012, cc. 785, 819.2013, cc. 756, 793.

§ 62.1-44.15:64. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Stop work orders by Board; civil penalties.

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved erosion and sediment control plan or required land-disturbance approval, or from the conduct of land-disturbing activities commenced without an approved plan or required land-disturbance approval, may give written notice of the alleged violation to the VESCP authority and to the Board.

B. If the VESCP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Board conduct an investigation and, if necessary, require the violator to stop the alleged violation and abate the damage to his property.

C. If the Board's investigation of the complaint indicates that (i) the VESCP authority has not responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not responded to the alleged violation within 30 days from the date of the notice given pursuant to subsection A, and (iii) there is a violation and it is necessary to require the violator to cease the violation as requested by the aggrieved owner, then the Board shall give written notice to the VESCP authority that the Board intends to issue an order pursuant to subsection D.

D. If the VESCP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Board, the Board is authorized to issue an order requiring the owner, person responsible for carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing activities without an approved plan or required land-disturbance approval to cease all land-disturbing activities until the violation of the plan has ceased or an approved plan and required land-disturbance approval are obtained, as appropriate, and specified corrective measures have been completed. The Board also may immediately initiate a program review of the VESCP.

E. Such orders are to be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.), and they shall become effective upon service on the person by mailing with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Board. Any subsequent identical mail or notice that is sent by the Board may be sent by regular mail. However, if the Board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site

immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

F. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

G. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund (§ 62.1-44.15:29.1).

1993, c. 925, § 10.1-569.1; 2012, cc. 785, 819.2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:65. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Authorization for more stringent regulations.

A. As part of a VESCP, a district or locality is authorized to adopt more stringent soil erosion and sediment control regulations or ordinances than those necessary to ensure compliance with the Board's regulations, provided that the more stringent regulations or ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of an MS4 permit or a locally adopted watershed management study and are determined by the district or locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent regulations or ordinances, a public hearing is held after giving due notice. The VESCP authority shall report to the Board when more stringent stormwater management regulations or ordinances are determined to be necessary pursuant to this section. However, this section shall not be construed to authorize any district or locality to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ 62.1-44.15:55 and 62.1-44.15:57.

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

1973, c. 486, § 21-89.12; 1988, c. 891, § 10.1-570; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-44.15:65. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Authorization for more stringent ordinances.

A. As part of a VESCP, a locality is authorized to adopt more stringent soil erosion and sediment control ordinances than those necessary to ensure compliance with the Board's regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive

watershed management studies or findings developed through the implementation of a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances, a public hearing is held after giving due notice. The VESCP authority shall report to the Board when more stringent erosion and sediment control ordinances are determined to be necessary pursuant to this section. This process shall not be required when a VESCP authority chooses to reduce the threshold for regulating land-disturbing activities to a smaller area of disturbed land pursuant to § 62.1-44.15:55. This section shall not be construed to authorize any VESCP authority to impose any more stringent ordinances for land-disturbance review and approval than those specified in § 62.1-44.15:55.

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

1973, c. 486, § 21-89.12; 1988, c. 891, § 10.1-570; 2012, cc. 785, 819; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:66. No limitation on authority of Department of Mines, Minerals and Energy.
The provisions of this article shall not limit the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.) and 19 (§ 45.1-226 et seq.) of Title 45.1 or oil or gas exploration under the Virginia Gas and Oil Act (§ 45.1-361.1 et seq.).

1973, c. 486, § 21-89.13; 1988, c. 891, § 10.1-571; 1996, c. 688; 2012, cc. 785, 819; 2013, cc. 47, 129, 756, 793.

Article 2.5 - CHESAPEAKE BAY PRESERVATION ACT

§ 62.1-44.15:67. Cooperative state-local program.
A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise

required to carry out and enforce the provisions of this article; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this article.

B. Local governments have the initiative for planning and for implementing the provisions of this article, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this article, and by providing those resources necessary to carry out and enforce the provisions of this article.

1988, cc. 608, 891, § 10.1-2100; 2013, cc. 756, 793.

§ 62.1-44.15:68. Definitions.

For the purposes of this article, the following words shall have the meanings respectively ascribed to them:

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with criteria established pursuant to § 62.1-44.15:72.

"Criteria" means criteria developed by the Board pursuant to § 62.1-44.15:72 for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or use and develop land in Chesapeake Bay Preservation Areas.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system, has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51, and would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the Board under this article.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Secretary" means the Secretary of Natural Resources.

"Tidewater Virginia" means the following jurisdictions:

The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

1988, cc. 608, 891, § 10.1-2101; 2005, c. 41; 2012, cc. 785, 819; 2013, cc. 756, 793; 2015, c. 674.

§ 62.1-44.15:69. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Powers and duties of the Board.

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

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.

2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments, and federal agencies for the purpose of implementing this article.

3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this article.

4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

5. Develop, promulgate, and keep current the criteria required by § 62.1-44.15:72.

6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this article.

7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § 62.1-44.15:72.

8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this article. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.

10. Take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.

11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign.

1988, cc. 608, 891, § 10.1-2103; 1997, c. 266; 2013, cc. 756, 793.

§ 62.1-44.15:69. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Powers and duties of the Board.

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

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.

2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments, and federal agencies for the purpose of implementing this article.

3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this article.

4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

5. Develop, promulgate, and keep current the criteria required by § 62.1-44.15:72.

6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this article.

7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § 62.1-44.15:72.

8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this article. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.

10. Take administrative and legal actions pursuant to subdivision (19) of § 62.1-44.15 to ensure compliance by counties, cities, and towns with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.

11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign.

1988, cc. 608, 891, § 10.1-2103; 1997, c. 266; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:70. Exclusive authority of Board to institute legal actions.

The Board shall have the exclusive authority to institute or intervene in legal and administrative actions to ensure compliance by local governing bodies with this article and with any criteria or regulations adopted hereunder.

1988, cc. 608, 891, § 10.1-2104; 1997, c. 266; 2013, cc. 756, 793.

§ 62.1-44.15:71. (For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Program compliance.

Program compliance reviews conducted in accordance with § 62.1-44.15:69 and the regulations associated with this article shall be coordinated where applicable with those being implemented in accordance with the erosion and sediment control and stormwater management provisions of this chapter and associated regulations. The Department may also conduct a comprehensive or partial program compliance review and evaluation of a local government program more frequently than the standard schedule.

Following completion of a compliance review of a local government program, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement should deficiencies be found; otherwise, the Board may find the program compliant. When deficiencies are found, the Board will establish a schedule for the local government to come into compliance. The Board shall provide a copy of its decision to the local government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the compliance actions, then the Board shall have the authority to issue a special order to any local government imposing a civil penalty not to exceed $5,000 per day with the maximum amount not to exceed $20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

In lieu of issuing a special order, the Board is also authorized to take legal action against a local government to ensure compliance.

2012, cc. 785, 819, § 10.1-2104.1; 2013, cc. 756, 793.

§ 62.1-44.15:72. Board to develop criteria.

A. In order to implement the provisions of this article and to assist counties, cities, and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations that establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote (i)

protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, that might reasonably be expected to inhabit them; (ii) safeguarding of the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; (v) preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits; (vi) coastal resilience and adaptation to sea-level rise and climate change; and (vii) promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits that can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

D. In developing such criteria the Board may consult with and obtain the comments of any federal, state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and development of land or the protection of water. The Board shall give due consideration to the comments submitted by such federal, state, regional, or local agencies.

E. In developing such criteria, the Board shall provide that any locality in a Chesapeake Bay Preservation Area that allows the owner of an on-site sewage treatment system not requiring a Virginia Pollutant Discharge Elimination System permit to submit documentation in lieu of proof of septic tank pump-out shall require such owner to have such documentation certified by an operator or on-site soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, maintain, or design on-site sewage systems.

F. In developing such criteria, the Board shall not require the designation of a Resource Protection Area (RPA) as defined according to the criteria developed by the Board, adjacent to a daylighted stream. However, a locality that elects not to designate an RPA adjacent to a daylighted stream shall use a water quality impact assessment to ensure that proposed development on properties adjacent to the daylighted stream does not result in the degradation of the stream. The water quality impact assessment shall (i) be consistent with the Board's criteria for water quality assessments in RPAs, (ii) identify the impacts of the proposed development on water quality, and (iii) determine specific measures for the mitigation of those impacts. The objective of this assessment is to ensure that practices on properties adjacent to daylighted streams are effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution. The specific content for the water quality impact assessment shall be established and implemented by any locality that chooses not to designate an RPA adjacent to a daylighted stream. Nothing in this subsection shall limit a locality's authority to include a daylighted stream within the extent of an RPA.

G. Effective July 1, 2014, requirements promulgated under this article directly related to compliance with the erosion and sediment control and stormwater management provisions of this chapter and regulated under the authority of those provisions shall cease to have effect.

1988, cc. 608, 891, § 10.1-2107; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, c. 151; 2015, c. 674; 2020, c. 1207.

§ 62.1-44.15:73. Local government authority.

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2108; 2013, cc. 756, 793.

§ 62.1-44.15:74. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties.

A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions. Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city, and town in Tidewater Virginia not later than 12 months after adoption of criteria by the Board.

B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan consistent with the provisions of this article.

C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this article. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to § 62.1-44.15:72.

D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the provisions of this article. Counties, cities, and towns in Tidewater Virginia shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Board.

E. (For expiration date -- see notes) In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed $5,000 for each day of violation. Such civil penalties may, at 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 for the purpose of abating environmental damage

to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

2. With the consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or town itself, or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

E. (For effective date -- see notes) In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed $5,000 for each day of violation. Such civil penalties may, at 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 for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established by § 62.1-44.15:29.1.

2. With the consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or town itself, or its agent, the civil charges shall be paid into the state treasury and

deposited by the State Treasurer into the Stormwater Local Assistance Fund established by § 62.1-44.15:29.1. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal period for any person aggrieved by a decision of a board that has been established by the locality to hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the aggrieved party a minimum of 30 days from the date of such decision to appeal the decision to the circuit court.

1988, cc. 608, 891, § 10.1-2109; 1998, cc. 700, 714; 2008, c. 15; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.15:75. Local governments outside of Tidewater Virginia may adopt provisions.
Any local government, although not a part of Tidewater Virginia, may employ the criteria developed pursuant to § 62.1-44.15:72 and may incorporate protection of the quality of state waters into their comprehensive plans, zoning ordinances, and subdivision ordinances consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2110; 2013, cc. 756, 793.

§ 62.1-44.15:76. Local government requirements for water quality protection.
Local governments shall employ the criteria promulgated by the Board to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of state waters consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2111; 2013, cc. 756, 793.

§ 62.1-44.15:77. Effect on other governmental authority.
The authorities granted herein are supplemental to other state, regional, and local governmental authority. No authority granted to a local government by this article shall affect in any way the authority of the Board. No authority granted to a local government by this article shall limit in any way any other planning, zoning, or subdivision authority of that local government.

1988, cc. 608, 891, § 10.1-2113; 2013, cc. 756, 793.

§ 62.1-44.15:78. State agency consistency.
All agencies of the Commonwealth shall exercise their authorities under the Constitution and laws of Virginia in a manner consistent with the provisions of comprehensive plans, zoning ordinances, and subdivision ordinances that comply with §§ 62.1-44.15:74 and 62.1-44.15:75.

1988, cc. 608, 891, § 10.1-2114; 2013, cc. 756, 793.

§ 62.1-44.15:79. Vested rights protected.
The provisions of this article shall not affect vested rights of any landowner under existing law.

1988, cc. 608, 891, § 10.1-2115; 2013, cc. 756, 793.

Article 2.6 - Additional Upland Conditions for Water Quality Certification

§ 62.1-44.15:80. Findings and purpose.

The General Assembly determines and finds that to comply with § 401 of the federal Clean Water Act (33 U.S.C. § 1341), any applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters shall provide the federal licensing or permitting authority with a certification from the state in which the discharge originates or will originate certifying that any such discharge will comply with applicable provisions of the Clean Water Act. The General Assembly determines and finds that the Virginia Water Protection Permit program has proven to be sufficient to evaluate and, when necessary, mitigate potential water quality impacts for most federally permitted projects. Virginia Water Protection Permit coverage addresses the impacts caused to wetlands and streams by excavating in a wetland, draining or significantly altering wetland acreage or function, filling or dumping in a stream or wetland, or permanently flooding or impounding a wetland area or stream. However, the conditions and requirements of a Virginia Water Protection Permit do not cover activities in upland areas, outside of wetlands and streams, that may result in a discharge to state waters. The General Assembly determines and finds that for construction of natural gas transmission pipelines greater than 36 inches inside diameter that are subject to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)), there may be activities in upland areas that may have the potential to affect water quality but that do not fall within the scope of the Virginia Water Protection Permit program. Information related to such impacts would not be contained in the Joint Permit Application utilized to determine permit conditions for a Virginia Water Protection Permit. The General Assembly determines and finds that issuance of a Virginia Water Protection Permit and a certification issued pursuant to this article shall together constitute the certification required under § 401 of the Clean Water Act for natural gas transmission pipelines greater than 36 inches inside diameter subject to § 7c of the Natural Gas Act.

2018, c. 636.

§ 62.1-44.15:81. Application and preparation of draft certification conditions.

A. Any applicant for a federal license or permit for a natural gas transmission pipeline greater than 36 inches inside diameter subject to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) shall submit a separate application, at the same time the Joint Permit Application is submitted, to the Department containing a description of all activities that will occur in upland areas, including activities in or related to (i) slopes with a grade greater than 15 percent; (ii) karst geology features, including sinkholes and underground springs; (iii) proximity to sensitive streams and wetlands identified by the Department of Conservation and Recreation or the Department of Wildlife Resources; (iv) seasonally high water tables; (v) water impoundment structures and reservoirs; and (vi) areas with highly erodible soils, low pH, and acid sulfate soils.

B. At any time during the review of the application, but prior to issuing a certification pursuant to this article, the Department may issue an information request to the applicant for any relevant additional information necessary to determine (i) if any activities related to the applicant's project in upland areas

are likely to result in a discharge to state waters and (ii) how the applicant proposes to minimize water quality impacts to the maximum extent practicable to protect water quality. The information request shall provide a reasonable amount of time for the applicant to respond.

C. The Department shall review the information contained in the application and any additional information obtained through any information requests issued pursuant to subsection B to determine if any activities described in the application or in any additional information requests (i) are likely to result in a discharge to state waters with the potential to adversely impact water quality and (ii) will not be addressed by the Virginia Water Protection Permit issued for the activity pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.). The Department of Wildlife Resources, the Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture and Consumer Services shall consult with the Department during the review of the application and any additional information obtained through any information requests issued pursuant to subsection B. Following the conclusion of its review, the Department shall develop a draft certification for public comment and potential issuance by the Department or the Board pursuant to § 62.1-44.15:02 that contains any additional conditions for activities in upland areas necessary to protect water quality. The Department shall make the information contained in the application and any additional information obtained through any information requests issued pursuant to subsection B available to the public.

D. Notwithstanding any applicable annual standards and specifications for erosion and sediment control or stormwater management pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.), the applicant shall not commence land-disturbing activity prior to approval by the Department of an erosion and sediment control plan and stormwater management plan in accordance with applicable regulations. The Department shall act on any plan submittal within 60 days after initial submittal of a completed plan to the Department. The Department may issue either approval or disapproval and shall provide written rationale for any disapproval. The Department shall act on any plan that has been previously disapproved within 30 days after the plan has been revised and resubmitted for approval.

E. No action by either the Department or the Board on a certification pursuant to this article shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval.

F. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

2018, c. 636; 2020, c. 958.

§ 62.1-44.15:82. Public notice of draft certification conditions.

A. The Department shall prepare a public notice of draft certification conditions developed pursuant to § 62.1-44.15:81 that the applicant shall cause to be published once in one or more newspapers of general circulation selected by the Department in the areas in which the proposed activity is to take place.

B. The public notice shall include:

1. The name, address, telephone number, and government email address of the Department office at which persons may obtain information pertinent to the application;

2. A brief description of the activity that may result in a discharge to state waters or how to obtain detailed information on the activity;

3. The location of such activity and the state waters that may be affected. The location shall include a listing of all counties and cities in which the activity will occur and include either maps of the project area or directions on how to access such maps. Where possible, location information shall reference route numbers, road intersections, map coordinates, or similar information or how to obtain detailed information on the activity;

4. A summary of the draft certification conditions;

5. A brief description of the procedures for formulation of a final determination of any conditions, including the appropriate comment period required by subsection C and the means by which interested persons may comment on the application; and

6. Instructions for requesting a public hearing if a public hearing is not already scheduled.

C. If no public hearing has already been scheduled, a period of 30 days following the date of the publication of public notice shall be provided during which interested persons may submit written comments and requests for a hearing. If a public hearing has already been scheduled, public notice shall be provided at least 30 days before the public hearing date.

2018, c. 636.

§ 62.1-44.15:83. Requests for public hearing, hearings, and final decisions procedures.

A. The issuance of a certification pursuant to this article shall be a permit action for purposes of § 62.1-44.15:02.

B. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

2018, c. 636.

§ 62.1-44.15:84. Requests for modification or revocation; public notice.

A. The applicant or the Department may request that conditions in the certification be modified or revoked. Requests for modification or revocation of any certification conditions shall contain the following information:

1. If the request is made by the applicant, the name, mailing address, and telephone number of the requester and the name, mailing address, and telephone number of any person representing the requestor;

2. Where applicable, a statement specifically setting forth the requested modification and the reason for such modification; and

3. Where applicable, a statement specifically setting forth the reason for the requested revocation.

B. The Director shall review all requests for modification or revocation and make a tentative determination within 60 days of receipt of the completed request whether to grant or deny the requested modification or revocation.

C. Any draft modification or revocation shall be public noticed, and final decisions shall be made in the same manner as the original certification.

2018, c. 636.

Article 3 - REGULATION OF INDUSTRIAL ESTABLISHMENTS

§ 62.1-44.16. Industrial wastes.

A. 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.

1. 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. However, to the extent authorized by federal law and if the permit applicant so chooses, an abbreviated public notice shall be published in such newspaper listing the name of the permitted facility, the type of discharge, and a link to the Department's website with such public notice.

2. 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.

B. 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.

C. 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).

D. Any locality may adopt an ordinance that provides for the testing and monitoring of the land application of solid or semisolid industrial wastes within its political boundaries to ensure compliance with applicable laws and regulations.

E. The Board shall adopt regulations requiring the payment of a fee for the land application of solid or semisolid industrial wastes, pursuant to permits issued under this section, in localities that have adopted ordinances in accordance with subsection D. The person land applying industrial wastes shall (i) provide advance notice of the estimated fee to the generator of the industrial wastes unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department of Environmental Quality as provided by regulation. The fee shall be imposed on each dry ton of solid or semisolid industrial wastes that is land applied in a locality in accordance with the regulations adopted by the Board. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department of Environmental Quality;

2. The deposit of collected fees into the Sludge Management Fund established by subsection G of § 62.1-44.19:3; and

3. Disbursement of proceeds from the Sludge Management Fund by the Department of Environmental Quality pursuant to subsection G of § 62.1-44.19:3.

F. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of industrial wastes. The program shall include, at a minimum, instruction in (i) the provisions of the Virginia Pollution Abatement Permit Regulation; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of industrial wastes that are land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G of § 62.1-44.19:3. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of solid or semisolid industrial wastes performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to subsection G of § 62.1-44.19:3; and

2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

1970, c. 638; 2015, cc. 104, 677; 2018, c. 552.

§ 62.1-44.16:1. Local enforcement of industrial waste permits.

A. Any locality that has adopted an ordinance for the testing and monitoring of the land application of industrial wastes pursuant to § 62.1-44.16 shall have the authority to order the abatement of any violation of § 62.1-44.16 or of any violation of any permit or certificate issued under that section. Such abatement order shall identify the activity constituting the violation, specify the provision of the Code of Virginia or permit condition violated by the activity, and order that the activity cease immediately.

B. In the event of any dispute concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the Director, whose decision shall be final and binding unless reversed on judicial appeal pursuant to § 2.2-4026. Any person who fails or refuses to halt such activity may be compelled to do so by injunction issued by a court having competent jurisdiction. Upon determination by the Director that there has been a violation of § 62.1-44.16 or of any permit or certificate issued under that section and that such violation poses an imminent threat to public health, safety, or welfare, the Department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation. Neither the Board, the Commonwealth, nor any employee of the Commonwealth shall be liable for failing to provide the notification required by this section.

C. Local governments shall promptly notify the Department of all results from the testing and monitoring of the land application of industrial wastes performed by persons employed by local governments and any violation of § 62.1-44.16 or of any violation of any permit or certificate issued under that section, discovered by local governments.

2015, cc. 104, 677.

§ 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.

Code 1950, § 62.1-30; 1968, c. 659; 1970, c. 638.

§ 62.1-44.17:1. 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 (33 U.S.C. § 1342), 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 that 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 that 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 for any confined animal feeding operation covered by a Virginia Pollution Abatement permit.

1994, c. 698; 1998, cc. 805, 863; 2001, c. 109; 2003, c. 375; 2004, c. 455.

§ 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 § 3.2-5400, 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, phosphorous 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 phosphorus;

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 that 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. Notwithstanding subdivision 2 b, upon the effective date of the Department of Conservation and Recreation's revised regulatory criteria and standards governing phosphorous application rates adopted pursuant to subdivision 2 c, or on October 31, 2005, whichever is later, phosphorous application rates for all nutrient management plans developed pursuant to this section shall conform solely to such regulatory criteria and standards adopted by the Department of Conservation and Recreation to protect water quality or to reduce soil concentrations of phosphorus or phosphorous loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus.

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 for any confined animal feeding operation covered by a Virginia Pollution Abatement permit.

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.

1999, c. 1; 2004, c. 455; 2005, c. 78.

Article 3.1 - TOXICS DISCHARGE REDUCTION

§ 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.

1997, c. 155; 2000, cc. 17, 1043.

§ 62.1-44.17:3. Toxic substances 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 biennially, no later than January 1 in each odd-numbered year, to the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources. The report shall include 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 two years;

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.

1997, c. 155; 2000, cc. 17, 1043; 2015, c. 173.

§ 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.

2000, cc. 17, 1043.

Article 4 - REGULATION OF SEWAGE DISCHARGES

§ 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.).

Code 1950, §§ 62-39, § 62.1-31; 1968, c. 659; 1970, c. 638; 1991, c. 194; 2003, c. 614.

§ 62.1-44.18:1. Repealed.

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.

1976, c. 626.

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

2000, c. 69; 2001, c. 493.

§ 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.

Code 1950, § 62.1-33; 1968, c. 659; 1970, c. 638; 1976, c. 661; 1991, c. 194; 2003, c. 614.

§§ 62.1-44.19:1. Prohibiting sewage discharge under certain conditions in certain cities [Not set out].

Not set out. (1972, c. 840.)

§ 62.1-44.19:2. Additional requirements on sewage discharge in Norfolk, Newport News, Hampton, Virginia Beach, and Chesapeake [Not set out].

Not set out. (1972, c. 840; 1975, c. 373; 1976, c. 188.)

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

A. 1. 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 or valid Virginia Pollution Abatement Permit.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of this chapter. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The Department may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

3. 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 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. The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

B. The Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, shall adopt regulations to ensure that (i) sewage sludge permitted for land application, marketing, or distribution is properly treated or stabilized; (ii) land application, marketing, and distribution of sewage sludge is performed in a manner that will protect public health and the environment; and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, shall be prevented.

C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits, including general permits, authorizing the land application, marketing or distribution of sewage sludge;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;

5. Required procedures for land application, marketing, and distribution of sewage sludge;

6. Requirements for sampling, analysis, recordkeeping, and reporting in connection with land application, marketing, and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 62.1-44.15:3 and 62.1-44.19:3.4;

8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land applied, and approved by the Department of Conservation and Recreation prior to permit issuance under specific conditions, including but not limited to, sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, as defined in § 62.1-44.17:1.1, sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate, and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters;

9. Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the Department and to the local governing body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the current and preceding calendar year, which shall include information detailing each complaint and how it was resolved; and

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for any permit amendments to increase the acreage authorized by the initial permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings.

D. Prior to issuance of a permit authorizing the land application, marketing or distribution of sewage sludge, the Department shall consult with, and give full consideration to the written recommendations of the Department of Health and the Department of Conservation and Recreation. Such consultation shall include any public health risks or water quality impacts associated with the permitted activity. The Department of Health and the Department of Conservation and Recreation may submit written comments on proposed permits within 30 days after notification by the Department.

E. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by the regulations adopted under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by

the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be $5,000. The fee for the reissuance, amendment, or modification of a permit for an existing site shall not exceed $1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department.

G. There is hereby established in the treasury a special fund to be known as the Sludge Management Fund, hereinafter referred to as the Fund. The fees required by this section and by subsection E of § 62.1-44.16 shall be transmitted to the Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only and exclusively (i) for the Department's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit to land apply, distribute, or market sewage sludge or industrial wastes, the administration and management of the Department's sewage sludge and industrial wastes land application programs, including monitoring and inspecting, and the Department of Conservation and Recreation's costs for implementation of the sewage sludge application program and (ii) to reimburse localities with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge or solid or semisolid industrial wastes. The State Treasurer shall be the custodian of the moneys deposited in the Fund. No part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Board written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury, and property damages resulting from the transportation, storage or land application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.

I. 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.

J. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The per-

son requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

L. The permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

M. The Department shall randomly conduct unannounced site inspections while land application of sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this section, § 62.1-44.19:3.1, or regulations adopted under those sections.

N. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

O. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection E, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under this section. 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 as provided for by regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the Commonwealth. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department;

2. Deposit of the fees into the Fund; and

3. Disbursement of proceeds by the Department pursuant to subsection G.

Q. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of sewage sludge performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to this section; and

2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

R. Localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. Notwithstanding any contrary provision of law, a locality may by ordinance require that a special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in its jurisdiction, including any area that is zoned as an agricultural district or classification. Such ordinances shall not restrict the storage of sewage sludge on a farm as long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no longer than 45 days. No person shall apply to the State Health Commissioner or the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing such storage without first complying with all requirements adopted pursuant to this subsection.

1994, c. 288; 2001, c. 831; 2005, cc. 197, 396, 459, 593; 2007, cc. 390, 881, 927, 929; 2009, c. 42; 2015, cc. 104, 677.

§ 62.1-44.19:3.1. Certification of sewage sludge land applicators.

A. The Board, with the assistance of the Department of Health, and the Department of Professional and Occupational Regulation shall adopt regulations and standards for training, testing, and

certification of persons land applying Class B sewage sludge in the Commonwealth, and for revoking, suspending, or denying such certification from any person for cause. The regulations shall include standards and criteria for the approval of programs of instruction taught by governmental entities and by the private sector for the purpose of certifying sewage sludge land applicators. The Board shall promulgate the regulations and standards required by this subsection no later than July 1, 2008.

B. No person shall land apply Class B sewage sludge pursuant to a permit under § 62.1-44.19:3 unless a certified sewage sludge land applicator is onsite at all times during such land application, as of 180 days following the effective date of regulations required by this section.

2007, cc. 881, 929.

§ 62.1-44.19:3.2. Local enforcement of sewage sludge regulations.

A. Any locality that has adopted an ordinance for the testing and monitoring of the land application of sewage sludge pursuant to § 62.1-44.19:3 shall have the authority to order the abatement of any violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3, or of any violation of any regulation adopted under these sections. Such abatement order shall identify the activity constituting the violation, specify the Code provision or regulation violated by the activity, and order that the activity cease immediately.

B. In the event of any dispute concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the Director, whose decision shall be final and binding unless reversed on judicial appeal pursuant to § 2.2-4026. Any person who fails or refuses to halt such activity may be compelled to do so by injunction issued by a court having competent jurisdiction. Upon determination by the Director that there has been a violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3, or of any regulation adopted under these sections and that such violation poses an imminent threat to public health, safety, or welfare, the Department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation. Neither the Board, the Commonwealth, nor any employee of the Commonwealth shall be liable for failing to provide the notification required by this section.

C. Local governments shall promptly notify the Department of all results from the testing and monitoring of the land application of sewage sludge performed by persons employed by local governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3, or regulations adopted under those sections, discovered by local governments.

2007, cc. 881, 929.

§ 62.1-44.19:3.3. Septage disposal.

The Board shall have the authority to issue permits that 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 that are satisfactory to the Board. Upon receipt of a satisfactory application, the Board shall send a copy to the State Board of Health and shall comply with the provisions of § 62.1-44.19:3.4. The State Board of Health shall review the application without delay and advise the Board within 60 days of the requirements necessary to protect public health. The Board shall not

consider the application complete until comments have been received from the State Board of Health. 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 state waters or if the State Board of Health notifies the Board that public health is being adversely affected.

2007, cc. 881, 929.

§ 62.1-44.19:3.4. Notification of local governing bodies.

A. Whenever the Department receives an application for land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the Department shall notify the local governing bodies where disposal is to take place of pertinent details of the proposal and establish a date for a public meeting to discuss technical issues relating to the proposal. The Department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where land disposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The Board shall not issue the permit for land disposal until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting. This section shall not apply to applications for septic tank permits.

B. When a farm is to be added to an existing permit authorizing land application of sewage sludge, the Department shall notify persons residing on property bordering such farm, and shall receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the Department shall determine whether additional site-specific requirements should be included in the authorization for land application at the farm.

2007, cc. 881, 929; 2009, c. 42.

Article 4.01 - WATER QUALITY MONITORING, INFORMATION AND RESTORATION ACT

§ 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.

1997, c. 519; 2000, cc. 17, 1043.

§ 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 baccalaureate public institutions of higher education in the Commonwealth 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. Each request received by April 30 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 August 31 for requests received by April 30 of the same year. Such determination shall not be a regulation or case decision as defined by § 2.2-4001.

1997, c. 519; 2000, cc. 17, 945, 1043; 2007, c. 655.

§ 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 Wildlife Resources 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 Wildlife Resources 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 Department of Environmental Quality shall provide to the Virginia Department of Health and local newspapers, television stations, and radio stations, and shall disseminate via official social

media accounts and email notification lists, the discharge information reported to the Director of the Department of Environmental Quality pursuant to subsection B of § 62.1-44.5, when the Virginia Department of Health determines that the discharge may be detrimental to the public health or the Department determines that the discharge may impair beneficial uses of state waters.

1997, c. 519; 2000, cc. 17, 1043; 2020, cc. 958, 1182.

§ 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.

E. If an aggrieved party presents to the Board reasonable grounds indicating that the attainment of the designated use for a water is not feasible, then the Board, after public notice and at least 30 days provided for public comment, may allow the aggrieved party to conduct a use attainability analysis according to criteria established pursuant to the Clean Water Act and a schedule established by the Board. If applicable, the schedule shall also address whether TMDL development or implementation for the water should be delayed.

F. The plan required by subsection A shall be controlling unless and until amended or withdrawn by the Board.

1997, c. 519; 2006, c. 154; 2011, cc. 281, 322.

§ 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.

1997, c. 519.

§ 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.

2000, cc. 17, 1043.

§ 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.

2000, cc. 17, 1043.

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

A. 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.

B. It shall be the goal of the Department to encourage citizen water quality monitoring so that 3,000 stream miles are monitored by volunteer citizens by 2010.

2002, c. 708; 2007, c. 29.

Article 4.02 - CHESAPEAKE BAY WATERSHED NUTRIENT CREDIT EXCHANGE PROGRAM

§ 62.1-44.19:12. Legislative findings and purposes.

The 2000 Chesapeake Bay Agreement and related multistate cooperative and regulatory initiatives (i) establish allocations for nitrogen and phosphorus delivered to the Chesapeake Bay and its tidal tributaries to meet applicable water quality standards and (ii) place caps on the loads of these nutrients that may be discharged into the Chesapeake Bay watershed. These initiatives will require public and private point source dischargers of nitrogen and phosphorus to achieve significant additional reductions of these nutrients to meet the cap load allocations. The General Assembly finds and determines that adoption and utilization of a watershed general permit and market-based point source nutrient credit trading program will assist in (a) meeting these cap load allocations cost-effectively and as soon as possible in keeping with the 2010 timeline and objectives of the Chesapeake 2000 Agreement, (b) accommodating continued growth and economic development in the Chesapeake Bay watershed, and (c) providing a foundation for establishing market-based incentives to help achieve the Chesapeake Bay Program's nonpoint source reduction goals.

2005, cc. 708, 710.

§ 62.1-44.19:13. Definitions.

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

"Annual mass load of total nitrogen" (expressed in pounds per year) means the daily total nitrogen concentration (expressed as mg/L to the nearest 0.01 mg/L) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.34 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the daily total phosphorus concentration (expressed as mg/L to the nearest 0.01mg/L) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD) multiplied

by 8.34 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by this article.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

"Best management practice," "practice," or "BMP" means a structural practice, nonstructural practice, or other management practice used to prevent or reduce nutrient loads associated with stormwater from reaching surface waters or the adverse effects thereof.

"Biological nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of eight milligrams per liter and an annual average total phosphorus effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen and total phosphorus through the recycle or reuse of wastewater as determined by the Department.

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as determined by the specific geographic location of the permitted facility, to account for attenuation that occurs during riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model.

"Department" means the Department of Environmental Quality.

"Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000 gallons per day.

"Facility" means a point source discharging or proposing to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. This term does not include confined animal feeding operations, discharges of stormwater, return flows from irrigated agriculture, or vessels.

"General permit" means the general permit authorized by this article.

"MS4" means a municipal separate storm sewer system.

"Nutrient credit" or "credit" means a nutrient reduction that is certified pursuant to this article and expressed in pounds of phosphorus or nitrogen either (i) delivered to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the Southern Rivers watersheds. "Nutrient credit" does not include point source nitrogen credits or point source phosphorus credits as defined in this section.

"Nutrient credit-generating entity" means an entity that generates nonpoint source nutrient credits.

"Permitted facility" means a facility authorized by the general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by the general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total nitrogen, and (ii) the monitored annual mass load of total nitrogen discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total phosphorus, and (ii) the monitored annual mass load of total phosphorus discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the Department.

"Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern Shore, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to the Water Quality Management Planning Regulation (9VAC25-720) or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 for new or expanded facilities; or

(iii) applicable total nitrogen or total phosphorus waste load allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

2005, cc. 708, 710; 2012, cc. 748, 808; 2013, cc. 756, 793; 2015, c. 164.

§ 62.1-44.19:14. Watershed general permit for nutrients.

A. By January 1, 2006, or as soon thereafter as possible, the Board shall issue a Watershed General Virginia Pollutant Discharge Elimination System Permit, hereafter referred to as the general permit, authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Except as otherwise provided in this article, the general permit shall control in lieu of technology-based, water quality-based, and best professional judgment, interim or final effluent limitations for total nitrogen and total phosphorus in individual Virginia Pollutant Discharge Elimination System permits for facilities covered by the general permit where the effluent limitations for total nitrogen and total phosphorus in the individual permits are based upon standards, criteria, waste load allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

B. This section shall not be construed to limit or otherwise affect the Board's authority to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

C. The general permit shall contain the following:

1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility expressed as annual mass loads. The allocations for each permitted facility shall reflect the applicable individual water quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of two or more facilities located in the same tributary may apply for and receive an aggregated waste load allocation for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple facilities reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations established for such facilities individually;

2. A schedule requiring compliance with the combined waste load allocations for each tributary as soon as possible taking into account (i) opportunities to minimize costs to the public or facility owners by phasing in the implementation of multiple projects; (ii) the availability of required services and skilled labor; (iii) the availability of funding from the Virginia Water Quality Improvement Fund as established in § 10.1-2128, the Virginia Water Facilities Revolving Fund as established in § 62.1-225, and other financing mechanisms; (iv) water quality conditions; and (v) other relevant factors. Following receipt of the compliance plans required by subdivision C 3, the Board shall reevaluate the schedule taking into account the information in the compliance plans and the factors in this subdivision, and may modify the schedule as appropriate;

3. A requirement that within nine months after the initial effective date of the general permit, the permittees shall either individually or through the Association submit compliance plans to the Department for approval. The compliance plans shall contain, at a minimum, any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined waste load allocations of all the permittees in the tributary. The compliance plans may rely on the exchange of point source credits in accordance with this article, but not the acquisition of credits through payments authorized by § 62.1-44.19:18, to achieve compliance with the individual and combined waste load allocations in each tributary. The compliance plans shall be updated annually and submitted to the Department no later than February 1 of each year;

4. Such monitoring and reporting requirements as the Board deems necessary to carry out the provisions of this article;

5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters, to secure general permit coverage by filing a registration statement with the Department within a specified period after each effective date of the general permit. The procedure shall also require any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal waters to secure general permit coverage by filing a registration statement with the Department at the time he makes application with the Department for a new discharge or expansion that is subject to an offset or technology-based requirement in § 62.1-44.19:15, and thereafter within a specified period of time after each effective date of the general permit. The procedure shall also require any owner or operator of a facility with a discharge that is subject to an offset requirement in subdivision A 5 of § 62.1-44.19:15 to secure general permit coverage by filing a registration statement with the Department prior to commencing the discharge and thereafter within a specified period of time after each effective date of the general permit. The general permit shall provide that any facility authorized by a Virginia Pollutant Discharge Elimination System permit and not required by this subdivision to file a registration statement shall be deemed to be covered under the general permit at the time it is issued, and shall file a registration statement with the Department when required by this section. Owners or operators of facilities that are deemed to be permitted under this section shall have no other obligation under the general permit prior to filing a registration statement and securing coverage under the general permit based upon such registration statement;

6. A procedure for efficiently modifying the lists of facilities covered by the general permit where the modification does not change or otherwise alter any waste load allocation or delivery factor adopted pursuant to the Water Quality Management Planning Regulation (9VAC25-720) or its successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or incorporating new waste load allocations or delivery factors, including the opportunity for public notice and comment on such modifications or incorporations; and

7. Such other conditions as the Board deems necessary to carry out the provisions of this chapter and Section 402 of the federal Clean Water Act (33 U.S.C. § 1342).

D. 1. The Board shall (i) review during the year 2020 and every 10 years thereafter the basis for allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and (ii) as a result of such decennial reviews propose for inclusion in the Water Quality Management Planning Regulation (9VAC25-720) either the reallocation of unneeded allocations to other facilities registered under the general permit or the reservation of such allocations for future use.

2. For each decennial review, the Board shall determine whether a permitted facility has:

a. Changed the use of the facility in such a way as to make discharges unnecessary, ceased the discharge of nutrients, and become unlikely to resume such discharges in the foreseeable future; or

b. Changed the production processes employed in the facility in such a way as to render impossible, or significantly to diminish the likelihood of, the resumption of previous nutrient discharges.

3. Beginning in 2030, each review also shall consider the following factors for municipal wastewater facilities:

a. Substantial changes in the size or population of a service area;

b. Significant changes in land use resulting from adopted changes to zoning ordinances or comprehensive plans within a service area;

c. Significant establishment of conservation easements or other perpetual instruments that are associated with a deed and that restrict growth or development;

d. Constructed treatment facility capacity;

e. Significant changes in the understanding of the water chemistry or biology of receiving waters that would reasonably result in unused nutrient discharge allocations over an extended period of time;

f. Significant changes in treatment technologies that would reasonably result in unused nutrient discharge allocations over an extended period of time;

g. The ability of the permitted facility to accommodate projected growth under existing nutrient waste load allocations; and

h. Other similarly significant factors that the Board determines reasonably to affect the allocations granted.

The Board shall not reduce allocations based solely on voluntary improvements in nutrient removal technology.

E. The Board shall maintain and make available to the public a current listing, by tributary, of all permittees and permitted facilities under the general permit, together with each permitted facility's total nitrogen and total phosphorus waste load allocations, and total nitrogen and total phosphorus delivery factors.

F. Except as otherwise provided in this article, in the event that there are conflicting or duplicative conditions contained in the general permit and an individual Virginia Pollutant Discharge Elimination System permit, the conditions in the general permit shall control.

2005, cc. 708, 710; 2010, c. 288; 2017, c. 9.

§ 62.1-44.19:15. New or expanded facilities.

A. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under the general permit.

1. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design capacity as of July 1, 2005, and will install state-of-the-art nutrient removal technology at the time of the expansion.

2. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005, and will install, at a minimum, biological nutrient removal technology at the time of the expansion.

3. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day up to and including 99,999 gallons per day, or an equivalent load, directly into tidal or nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

4. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install (i) at a minimum, biological nutrient removal technology at any facility authorized to discharge up to and including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters, or up to and including 499,999 gallons per day, or an equivalent load, to nontidal waters; and (ii) state-of-the-art nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or

an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters.

5. An owner or operator of a facility treating domestic sewage authorized by a Virginia Pollutant Discharge Elimination System permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that has not commenced the discharge of pollutants prior to January 1, 2011, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only or when treatment of domestic sewage is not the primary purpose of the facility.

B. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this subsection.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the waste load allocations or point source nitrogen or point source phosphorus credits from one or more permitted facilities in the same tributary;

b. Acquisition of credits certified by the Board pursuant to § 62.1-44.19:20. Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit;

c. Acquisition of allocations purchased through the Nutrient Offset Fund established pursuant to § 10.1-2128.2;

d. Acquisition of allocations through such other means as may be approved by the Department on a case-by-case basis; or

e. Acquisition of credits or allocations through the implementation of best management practices on lands owned or controlled by, or under contractual obligation with, the new or expanded facility that achieve reductions greater than those currently required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, subject to the approval by the Board in accordance with standards and procedures that are consistent with those established in § 62.1-44.19:20. Any such best management practices shall be implemented on lands within the same tributary as the new or expanded facility, and any credits assigned by the Board based on those practices shall be subject to adjustment based on the relevant delivery factor, as defined in § 62.1-44.19:13.

2. Such allocations or credits shall be provided for a minimum period of five years with each registration under the general permit. This subdivision shall not preclude longer-term or permanent allocations, except that such allocations are subject to modification by the Board where necessary to conform to the Chesapeake Bay TMDL.

3. The Board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, 1 b, and 1 d. The Board shall approve allocations acquired in accordance with subdivision 1 d only after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a, 1 b, and 1 d and that such allocations are not reasonably available taking into account timing, cost, and other relevant factors.

4. Notwithstanding the priority provisions in subdivision 3, the Board may grant a waste load allocation in accordance with subdivision 1 d to an owner or operator of a facility authorized by a Virginia Pollution Abatement permit to land apply domestic sewage if (i) the Virginia Pollution Abatement permit was issued before July 1, 2005; (ii) the waste load allocation does not exceed such facility's permitted design capacity as of July 1, 2005; (iii) the waste treated by the existing facility is going to be treated and discharged pursuant to a Virginia Pollutant Discharge Elimination System permit for a new discharge; and (iv) the owner or operator installs state-of-the-art nutrient removal technology at such facility. Such facilities cannot generate credits or waste load allocations, based upon the removal of land application sites, that can be acquired by other permitted facilities to meet the requirements of this article.

C. Until such time as the Director finds that no allocations are reasonably available in an individual tributary, the general permit shall provide for the acquisition of allocations through payments into the Nutrient Offset Fund established in § 10.1-2128.2. Such payments shall be promptly applied by the Department to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan. The general permit shall base the cost of each pound of allocation on (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the Board may adjust the cost of each pound of allocation based on current costs and cost estimates.

D. The acquisition of nutrient allocations or credits from animal waste-to-energy or animal waste reduction facilities, or the acquisition of such nutrient allocations or credits from entities acting on behalf of such facilities, shall be considered point source allocations or credits for all nutrient trading purposes and shall not be subject to any otherwise applicable nonpoint source trading ratio if the best management practice being used to generate such nutrient allocations or credits is a point source nutrient removal technology. Point source nutrient removal technology shall include animal waste gasification in which lab analysis of the animal waste reveals the concentration of nutrients in the animal waste being fed into the gasifier, and the fate of the nutrients during the animal waste gasification process, is known and documented using studies such as air emissions tests and ash analyses.

2005, cc. 708, 710; 2007, c. 27; 2010, c. 288; 2011, cc. 440, 524; 2012, cc. 748, 808; 2013, cc. 756, 793; 2016, cc. 137, 377.

§ 62.1-44.19:16. Technology-based standards and effluent limitations.

A. The Board may establish a technology-based standard less stringent than the applicable standard specified in § 62.1-44.19:15 based on a demonstration by an owner or operator that the specified standard is not technically or economically feasible for the affected facility or that the technology-based standard would require the owner or operator to construct treatment facilities not otherwise necessary to comply with his waste load allocation without reliance on nutrient credit exchanges pursuant to § 62.1-44.19:18.

B. The Board may include technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade. Such limitations shall be based upon the technology installed by the facility and shall be expressed as annual average limitations. Such limitations shall not affect the generation, acquisition, or exchange of allocations or credits pursuant to this article.

2005, cc. 708, 710.

§ 62.1-44.19:17. Virginia Nutrient Credit Exchange Association authorized; duties; composition; appointment; terms.

A. The permittees under the general permit may establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, to be known as the Virginia Nutrient Credit Exchange Association, to coordinate and facilitate participation in the nutrient credit exchange program by its members. The Virginia Nutrient Credit Exchange Association, which is hereafter referred to as the Association, may (i) submit on behalf of the permittees the compliance plans required by § 62.1-44.19:14, (ii) develop a standard form of agreement for use by permittees when buying and selling nitrogen and phosphorus allocations and credits, (iii) assist permittees in identifying buyers and sellers of nitrogen and phosphorus allocations and credits, (iv) coordinate planning to ensure that to the extent possible, sufficient credits are available each year to achieve full compliance with the general permit, (v) assist individual municipal permittees in utilizing public-private partnerships and other innovative measures to achieve the Commonwealth's water quality goals, and (vi) perform such other duties and functions as may be necessary to the effective and efficient implementation of the credit exchange program. The Association shall not assume any of the permittees' compliance obligations under the general permit.

B. Only permittees under the general permit may become members of the Association. The Association shall operate through a board of directors, which shall consist of 10 members and be representative of the membership in the Association. Association board members shall be employees of Association members, shall be elected by the Association membership at the beginning of each term of the general permit, and shall serve through the end of the permit term to which they were elected. Vacancies for unexpired Association board terms shall be filled in the same manner in which members are originally elected to the Association board.

C. The Association board shall elect a president, vice-president, secretary, and treasurer from among its members at the beginning of each permit term. Officers and Association board members shall receive no compensation for their services as officers and board members of the Association.

2005, cc. 708, 710.

§ 62.1-44.19:18. Nutrient allocation compliance and reporting.

A. Each permitted facility shall be in compliance with its individual waste load allocations if: (i) its annual mass load is less than the applicable waste load allocation assigned to the facility in the general permit; (ii) the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 1; or (iii) in the event it is unable to meet the individual waste load allocation pursuant to clauses (i) or (ii), the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made in accordance with subdivision 2, provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.

1. A permittee may acquire point source nitrogen or phosphorus credits from one or more permitted facilities only if (i) the credits are generated and applied to a compliance obligation in the same calendar year, (ii) the credits are generated by one or more permitted facilities in the same tributary, except that permitted facilities in the Eastern Coastal Basin may also acquire credits from permitted facilities in the Potomac and Rappahannock tributaries, (iii) the credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied, and (iv) no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has acquired sufficient credits to satisfy his compliance obligations.

2. A permittee may acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 only if, no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of the general permit.

B. Until such time as the Director finds that no credits are reasonably available in an individual tributary, the general permit shall provide for the acquisition of nitrogen and phosphorus credits through payments into the Nutrient Offset Fund in accordance with subdivision A 2. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan. The general permit shall base the cost of each nitrogen or phosphorus credit on the average cost of reducing one pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired. Upon each reissuance of the general permit, the Board may adjust the cost of each nitrogen and phosphorus credit based on (i) the current average cost of reducing a pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired and (ii) any additional incentives

reasonably necessary to ensure that there is timely and continuing progress toward attaining and maintaining each tributary's combined waste load allocation.

C. On or before February 1, annually, each permittee shall file a discharge monitoring report with the Department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by each permitted facility during the previous calendar year. The report shall contain the certification required by federal and state law and be signed by each permittee for each of the permittee's facilities covered by the general permit.

D. On or before April 1, annually, the Department shall prepare a report containing the annual mass load of total nitrogen and annual mass load of total phosphorus discharged by each permitted facility, the number of point source nitrogen and phosphorus credits for the previous calendar year generated or required by each such facility, and to the extent there are insufficient point source credits available for exchange to provide for full compliance by every permittee, the number of credits to be purchased pursuant to this section. Upon completion of the report, the Department shall promptly publish notice of the report and make the report available to any person requesting it.

E. On or before July 1, annually, the Department shall publish notice of all nitrogen and phosphorus credit exchanges and purchases for the previous calendar year and make all documents relating to the exchanges and purchases available to any person requesting them.

2005, cc. 708, 710; 2010, c. 11; 2011, c. 524; 2012, cc. 748, 808.

§ 62.1-44.19:19. Program audits.

In addition to its permit compliance and enforcement authority, the Department is authorized to conduct such audits of the Association and permittees as it deems necessary to ensure that the reports and data received from permittees and the Association are complete and accurate. The Association and permittees under the general permit shall cooperate with the Department in the conduct of such audits and provide the Department with such information as the Department may require to fulfill its responsibilities under this article.

2005, cc. 708, 710.

§ 62.1-44.19:20. Nutrient credit certification.

A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board shall adopt regulations for the purpose of establishing procedures for the certification of non-point source nutrient credits.

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

b. Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;

c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;

d. Certifying credits from multiple practices that are bundled as a package by the applicant;

e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;

f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed $10,000 per application, and review and approval procedures;

g. Requiring public notification of a proposed nutrient credit-generating entity; and

h. Establishing a timeline for the consideration of certification applications for land conversion projects. The timeline shall provide that within 30 days of receipt of an application the Department shall, if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall either determine that the application is complete or request additional specific information from the applicant. A determination that an application for a land conversion project is complete shall not require the Department to issue the certification. The Department shall deny, approve, or approve with conditions an application within 15 days of the Department's determination that the application is complete. When the request for credit release is made concurrently with the application for a land conversion project certification, the concurrent release shall be processed on the same timeline. When the request for credit release is from a previously approved land conversion project, the Department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in this subdivision shall be implemented prior to adoption of regulations. The Department shall release credits from a land conversion project after it is satisfied that the applicant has met the criteria for release in an approved nutrient reduction implementation plan.

2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:

a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;

c. Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs applicable to that land use;

e. Baselines for other nonpoint source credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best available scientific and technical information;

f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed a credit-generating practice that involves land use conversion, which shall represent controls beyond those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice shall represent controls beyond those in place at the time of TMDL approval;

g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

h. Credit quantities, which shall be established using the best available scientific and technical information at the time of certification;

3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term of no less than 12 months;

4. Establish requirements to reasonably assure the generation of the credit depending on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and maintenance requirements, and associated financial assurance requirements. Financial assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a point source permitted under this article, its existing tax or rate authority;

5. Establish appropriate reporting requirements;

6. Provide for the ability of the Department to inspect or audit for compliance with the requirements of such regulations;

7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements;

8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently retired at the time of certification pursuant to this section for the purposes of offsetting growth in unregulated nutrient loads; and

9. Establish such other requirements as the Board deems necessary and appropriate.

C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available scientific and technical information and (ii) credits that are located in tributaries outside of the Chesapeake Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates for each practice identified in Appendix A of the Department's document "Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners. "

D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits as follows:

1. The registry shall include all nonpoint source credits certified pursuant to this article and may include point source nitrogen and point source phosphorus credits generated from point sources covered by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified pursuant to this section at the option of the owner. No other credits shall be valid for compliance purposes.

2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such credits from transferring the credits on such commercial terms as may be established by and between the owner and the regulated or unregulated party acquiring the credits.

3. The Department shall establish procedures for the listing and tracking of credits on the registry, including but not limited to (i) notification of the availability of new nutrient credits to the locality where the credit-generating practice is implemented at least five business days prior to listing on the registry to provide the locality an opportunity to acquire such credits at fair market value for compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a representation by the Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the prospective user's intended use and that the prospective user is encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the intended use.

4. The registry shall be publicly accessible without charge.

E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-44.19:22.

F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.

2012, cc. 748, 808; 2013, cc. 756, 793; 2016, c. 653.

§ 62.1-44.19:21. Nutrient credit use by regulated entities.

A. An MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any waste load allocations established as effluent limitations in an MS4 permit issued pursuant to § 62.1-44.15:25. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits. The permittee may use such credits for compliance purposes only if (i) the credits, whether annual, term, or perpetual, are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than a date following the calendar year in which the credits are applied as specified by the Department consistent with the permittee's Virginia Stormwater Management Program (VSMP) permit annual report deadline under such permit; (iii) the credits are generated in the same locality or tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries; and (iv) the credits either are point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14, or are certified pursuant to § 62.1-44.19:20. An MS4 permittee may enter into an agreement with one or more other MS4 permittees within the same locality or within the same or adjacent eight-digit hydrologic unit code to collectively meet the sum of any waste load allocations in their permits. Such permittees shall submit to the Department for approval a compliance plan to achieve their aggregate permit waste load allocations.

B. Those applicants required to comply with water quality requirements for land-disturbing activities operating under a General VSMP Permit for Discharges of Stormwater from Construction Activities or a Construction Individual Permit may acquire and use perpetual nutrient credits certified and registered on the Virginia Nutrient Credit Registry in accordance with § 62.1-44.15:35.

C. Confined animal feeding operations issued permits pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations contained in the provisions of a Virginia Pollutant Discharge Elimination System (VPDES) permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

D. Facilities registered under the Industrial Stormwater General Permit issued pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

E. Public notice of each compliance plan submitted for approval pursuant to this section shall be given by the Department.

F. This section shall not be construed to limit or otherwise affect the authority of the Board to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

2012, cc. 748, 808, § 10.1-603.15:3; 2013, cc. 756, 793.

§ 62.1-44.19:21.2. Nutrient and sediment credit generation and transfer; public body.

A. Except as provided in subsection B, the only nonpoint nutrient credits that shall be transferred pursuant to either (i) § 62.1-44.15:35 or (ii) subsections B, C, and D of § 62.1-44.19:21 are nutrient credits generated by the private sector, including credits generated by the private sector pursuant to an agreement with a public body.

B. Other than for purposes of subsection A of § 62.1-44.19:21, nutrient credits or sediment credits generated by a project undertaken by a public body, including a locality, and certified by the Department shall be used only by such public body and only for the purpose of compliance with the provisions of this chapter by such public body's project. For the purposes of this subsection, the term "public body's project" means a project for which the public body is the named permittee and for which no third party conducts any lease, sale, grant, transfer, or use of the project or its nutrient or sediment credits.

C. Any publicly owned treatment works that is permitted under the Watershed General Virginia Pollutant Discharge Elimination System (VPDES) Permit pursuant to § 62.1-44.19:14 and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, as an alternative to acquiring and using certain perpetual nutrient credits pursuant to subsection B of § 62.1-44.19:21, permanently retire a portion of its wasteload allocation if (i) notice is given by such applicant to the Department, (ii) a ratio of 10 pounds of nitrogen allocation for each pound of phosphorous allocation retired is also permanently retired and applied toward the land-disturbing project, and (iii) the general permit registration list is modified to reflect the permanent retirement of the wasteload allocation. Except for a water reclamation and reuse project at a treatment works, no more than 10 pounds per year of phosphorous allocation may be applied toward a single project's postconstruction phosphorus control requirement.

D. Nothing in this section shall be construed to prevent any (i) public body, including a locality, from entering into an agreement with a private third party for the development of a project to generate

nonpoint nutrient credits on terms and conditions upon which the public body and private third party agree or (ii) locality from operating a locality pollutant loading pro rata share program for nutrient reductions established pursuant to § 15.2-2243.

2020, cc. 1102, 1103.

§ 62.1-44.19:21.1. Sediment credit use by regulated MS4s.

A. Subject to the conditions and limitations of subsections B, C, and D, an MS4 permittee may acquire and use sediment credits for purposes of compliance with any waste load allocations established by total maximum daily loads for the Chesapeake Bay or its tidal tributaries applied in an MS4 permit issued pursuant to § 62.1-44.15:25, where such credit use is part of an integrated compliance plan for the MS4 permittee to address such nutrient and sediment total maximum daily loads.

B. Such method of compliance may be approved by the Department following review of an integrated compliance plan submitted by the permittee that includes the use of sediment credits. The permittee may use such credits for compliance purposes only if (i) the credits are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than June 1 immediately following the calendar year to which the credits are applied; (iii) no later than June 1 immediately following the calendar year to which credits are applied, the permittee certifies on a form supplied by the Department that he has acquired sufficient credits to satisfy his compliance obligations; (iv) the credits are generated in the same tributary; (v) the sediment credits are not associated with phosphorus credits used for compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28; and (vi) the credits are derived from (a) implementation of best management practices in a defined area outside of an MS4 service area, in which case the necessary baseline sediment reduction for such defined area shall be achieved prior to the permittee's use of additional reductions as credit, or (b) a point source waste load allocation established by the Chesapeake Bay total maximum daily load, in which case the credit is the difference between the waste load allocation specified as an annual mass load and any lower monitored annual mass load that is discharged as certified on a form supplied by the Department.

C. This section shall not be construed to limit or otherwise affect the authority of the Board to establish and enforce more stringent water quality-based effluent limitations in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

D. The Board may adopt regulations for the purpose of establishing procedures for the certification of nonpoint source sediment credits used pursuant to subsection B. The Board's administration of this section and its adoption of any such regulations shall be consistent wherever appropriate with the standards and procedures established pursuant to § 62.1-44.19:20 for certification of nonpoint source nutrient credits, including, without limitation, the opportunity for public notification, the retirement of credits, sediment baseline attainment as a condition on generation and use of nonpoint source sed-

iment credits, financial assurance requirements, and requirements for inspection or auditing by the Department.

E. For the purposes of this section, "sediment credit" means a sediment or total suspended solids reduction that is expressed in pounds delivered to tidal waters within the Chesapeake Bay Watershed.

2016, cc. 8, 126.

§ 62.1-44.19:22. Enforcement and penalties.

A. Transfer of certified nutrient credits by an operator of a nutrient credit-generating entity may be suspended by the Department until such time as the operator comes into compliance with this article and attendant regulations.

B. (For expiration date -- see notes) Any operator of a nutrient credit-generating entity who violates any provision of this article, or of any regulations adopted hereunder, shall be subject to a civil penalty not to exceed $10,000 within the discretion of the court. The Department may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate circuit court. When the penalties are assessed by the court as a result of a summons issued by the Department, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29.

B. (For effective date -- see notes) Any operator of a nutrient credit-generating entity who violates any provision of this article, or of any regulations adopted hereunder, shall be subject to a civil penalty not to exceed $10,000 within the discretion of the court. The Department may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate circuit court. When the penalties are assessed by the court as a result of a summons issued by the Department, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

2012, cc. 748, 808, § 10.1-603.15:4; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 62.1-44.19:23. Appeals.

Any person applying to establish a nutrient credit-generating entity or an operator of a nutrient credit-generating entity aggrieved by any action of the Department taken in accordance with this section, or by inaction of the Department, shall have the right to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2012, cc. 748, 808, § 10.1-603.15:5; 2013, cc. 756, 793.

Article 5 - ENFORCEMENT AND APPEAL PROCEDURE

§ 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 obtain-

ing information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

Code 1950, § 62.1-34; 1968, c. 659; 1970, c. 638.

§ 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.

Code 1950, § 62.1-35; 1968, c. 659; 1970, c. 638; 1974, c. 237.

§ 62.1-44.22. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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.

Code 1950, § 62.1-36; 1968, c. 659; 1970, c. 638.

§ 62.1-44.22. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Private actions.

The fact that any owner holds or has held a certificate or land-disturbance approval issued under this chapter shall not constitute a defense in any civil action involving private rights.

Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

Code 1950, § 62.1-36; 1968, c. 659; 1970, c. 638; 2016, cc. 68, 758.

§ 62.1-44.23. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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, except as provided by a separate article, 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.

Code 1950, § 62.1-37; 1952, c. 702; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167; 1990, c. 717; 1994, c. 489; 2013, cc. 756, 793.

§ 62.1-44.23. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, approved standard and specification, or requirement of or any provision of any certificate or land-disturbance approval 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, except as provided by a separate article, 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.

Code 1950, § 62.1-37; 1952, c. 702; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167; 1990, c. 717; 1994, c. 489; 2013, cc. 756, 793; 2016, cc. 68, 758.

§ 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.

1989, c. 218.

§ 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 (§ 2.2-4000 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.

1970, c. 638; 1984, c. 703; 1986, c. 615.

§ 62.1-44.25. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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.

1970, c. 638.

§ 62.1-44.25. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Right to hearing.

Any owner under Article 2.3 (§ 62.1-44.15:24 et seq.), Article 2.5 (§ 62.1-44.15:67 et seq.), or § 62.1-44.16, 62.1-44.17, or 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 30 days after notice of such action is mailed to such owner by certified mail.

1970, c. 638; 2016, cc. 68, 758.

§ 62.1-44.26. Hearings.

A. (For expiration date -- see notes) The formal hearings held under this chapter shall be conducted pursuant to § 2.2-4009 or 2.2-4020 and 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.

A. (For effective date -- see notes) The formal hearings held by the Board under this chapter shall be conducted pursuant to § 2.2-4009 or 2.2-4020 and 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 § 2.2-4022. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

1970, c. 638; 1977, c. 291; 1993, c. 897; 2008, cc. 276, 557; 2016, cc. 68, 758.

§ 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.

1970, c. 638.

§ 62.1-44.28. Decisions of the Board in hearings pursuant to §§ 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.

1970, c. 638.

§ 62.1-44.29. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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), 62.1-44.15:20, 62.1-44.15:21, 62.1-44.15:22, 62.1-44.15:23, 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 (§ 2.2-4000 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.

1970, c. 638; 1986, c. 615; 1996, c. 1032; 2000, cc. 1032, 1054; 2007, c. 659.

§ 62.1-44.29. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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 subdivision (5), (8a), (8b), (8c), or (19) of § 62.1-44.15 or § 62.1-44.15:20, 62.1-44.15:21, 62.1-44.15:22, 62.1-44.15:23, 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 (§ 2.2-4000 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.

1970, c. 638; 1986, c. 615; 1996, c. 1032; 2000, cc. 1032, 1054; 2007, c. 659; 2016, cc. 68, 758.

§ 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.

1970, c. 638; 1984, c. 703.

Article 6 - OFFENSES AND PENALTIES

§ 62.1-44.31. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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.

Code 1950, § 62.1-43; 1952, c. 478; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167.

§ 62.1-44.31. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Violation of order or certificate or failure to cooperate with Board.
It shall be unlawful for any owner to fail to comply with any 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 or land-disturbance approval issued by the Board or in excess of the waste covered by such certificate or land-disturbance approval, 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 and 62.1-44.15:24, any responsible corporate officer so designated in the applicable discharge permit.

Code 1950, § 62.1-43; 1952, c. 478; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167; 2016, cc. 68, 758.

§ 62.1-44.32. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties.
(a) Except as otherwise provided in this chapter, 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 $32,500 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) Except as otherwise provided in this chapter, 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 12 months and a fine of not less than $2,500 nor more than $32,500, 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 12 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) Except as otherwise provided in this chapter, 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 15 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 million 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.

Code 1950, § 62.1-44; 1968, c. 659; 1970, c. 638; 1974, c. 237; 1977, c. 263; 1980, c. 378; 1981, cc. 582, 596; 1989, c. 627; 1990, cc. 13, 717; 1991, c. 718; 2005, c. 706; 2013, cc. 756, 793.

§ 62.1-44.32. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Penalties.

(a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any regulation, certificate, land-disturbance approval, or order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed $ 32,500 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 (§ 10.1-2500 et seq.) of Title 10.1, excluding penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), 2.4 (§ 62.1-44.15:51 et seq.), 2.5 (§ 62.1-44.15:67 et seq.), 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 2.3, 2.4, 2.5, 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) Except as otherwise provided in this chapter, any person who willfully or negligently violates (1) any provision of this chapter, any regulation or order of the Board, or any condition of a certificate or land-disturbance approval of the Board, (2) any land-disturbance approval, ordinance, or order of a locality serving as a Virginia Erosion and Stormwater Management Program authority, or (3) any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months

and a fine of not less than $ 2,500 nor more than $ 32,500, either or both. Any person who knowingly violates (A) any provision of this chapter, any regulation or order of the Board, or any condition of a certificate or land-disturbance approval of the Board, (B) any land-disturbance approval, ordinance, or order of a locality serving as a Virginia Erosion and Stormwater Management Program authority, or (C) 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 12 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) Except as otherwise provided in this chapter, 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 15 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 million 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.

Code 1950, § 62.1-44; 1968, c. 659; 1970, c. 638; 1974, c. 237; 1977, c. 263; 1980, c. 378; 1981, cc. 582, 596; 1989, c. 627; 1990, cc. 13, 717; 1991, c. 718; 2005, c. 706; 2013, cc. 756, 793; 2016, cc. 68, 758.

Article 7 - Pollution From Boats

§ 62.1-44.33. Board to adopt regulations; tidal waters no discharge zones.

A. The State Water Control Board is empowered and directed to adopt all necessary 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 that 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: (i) vessels regularly berthed in marinas or other places where vessels are moored, in order to limit or avoid the closing of shellfish grounds; and (ii) no discharge zones. 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. Any discharges, as defined in 9VAC25-71-10, that are incidental to the normal operation of a vessel shall not constitute a violation of this section.

B. The tidal creeks of the Commonwealth are hereby established as no discharge zones for the discharge of sewage and other wastes from documented and undocumented boats and vessels. Criteria for the establishment of no discharge zones shall be premised on the improvement of impaired tidal creeks. Nothing in this section shall be construed to discourage the proper use of Type 1 and Type 2 Marine Sanitation Devices, as defined under 33 U.S.C. § 1332, in authorized areas other than properly designated no discharge zones. The Board shall adopt regulations for designated no discharge zones requiring (i) boats and vessels without installed toilets to dispose of any collected sewage from portable toilets or other containment devices at marina facilities approved by the Department of Health for collection of sewage wastes, or otherwise dispose of sewage in a manner that complies with state law; (ii) all boats and vessels with installed toilets to have a marine sanitation device to allow sewage holding capacity unless the toilets are rendered inoperable; (iii) all houseboats having installed toilets to have a holding tank with the capability of collecting and holding sewage and disposing of collected sewage at a pump-out facility; if the houseboats lack such tank then the marine sanitation device shall comply with clause (iv); (iv) y-valves, macerator pump valves, discharge conveyances or any other through-hull fitting valves capable of allowing a discharge of sewage from marine sanitation devices shall be secured in the closed position while in a no discharge zone by use of a padlock, non-releasable wire tie, or removal of the y-valve handle. The method chosen shall present a physical barrier to the use of the y-valve or toilet; and (v) every owner or operator of a marina within a designated no discharge zone to notify boat patrons leasing slips of the sewage discharge restriction in the no discharge zone. As a minimum, notification shall consist of no discharge zone information in the slip rental contract and a sign indicating the area is a designated no discharge zone.

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

For purposes of this section, "no discharge zone" means an area where the Commonwealth has received an affirmative determination from the U.S. Environmental Protection Agency that there are adequate facilities for the removal of sewage from vessels (holding tank pump-out facilities) in accordance with 33 U.S.C. § 1322 (f)(3), and where federal approval has been received allowing a complete prohibition of all treated or untreated discharges of sewage from all vessels.

C. Violation of such 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 regulations adopted under the

provisions of this section and to enforce the prohibitions on the discharge of treated and untreated sewage created by this section.

Code 1950, § 62.1-44.1; 1968, c. 659; 1970, c. 638; 1975, c. 204; 1997, c. 502; 2001, c. 42; 2004, c. 287; 2009, c. 337; 2011, c. 220; 2020, c. 958.

§ 62.1-44.34. Repealed.

Repealed by Acts 1978, c. 816.

Article 8 - DISCHARGE OF OIL INTO WATERS

§§ 62.1-44.34:1 through 62.1-44.34:6. Repealed.

Repealed by Acts 1990, c. 917.

§ 62.1-44.34:7. Repealed.

Repealed by Acts 1989, c. 627.

Article 9 - STORAGE TANKS

§ 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.

1987, c. 528; 1989, c. 430; 1992, c. 819; 1996, cc. 737, 979.

§ 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.

1987, c. 528; 1989, c. 430; 1992, c. 819; 1993, c. 231; 1996, c. 737.

Article 10 - PETROLEUM STORAGE TANK FUND

§ 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.

1987, c. 677; 1989, cc. 430, 627; 1992, c. 819; 1996, cc. 737, 979.

§ 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 $1 million.

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 $1 million. The reasonableness and necessity of costs shall be determined based upon documented or actual damage, loss in value, and other relevant factors. Disbursements for third party claims shall be subordinate to disbursements for the corrective action costs in subdivision A 2 a of this section. Compensation for bodily injury and property damage shall be paid only in accordance with final court orders in cases which have been tried to final judgment no longer (i) subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the Board approved the settlement of claim between the owner or operator and the third-party prior to execution by the parties.

c. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed $10 million 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 $1 million; (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 $1 million; (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 $.05 per gallon of aboveground storage capacity up to $1 million; 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 $1 million. For purposes of this subdivision (2 c), 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 $10 million 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 $1 million; (ii) for an operator of a facility with a storage capacity from four million gallons to 20 million gallons, per occurrence costs in excess of $.05 per gallon of aboveground storage capacity up to $1 million; and (iii) an operator of a facility with a storage capacity greater than 20 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 $1 million 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 90 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 $1 million 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 $1 million, 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.

1987, c. 677; 1989, cc. 430, 627; 1990, cc. 580, 581, 582, 917; 1992, cc. 456, 819; 1993, cc. 20, 375; 1994, cc. 196, 535; 1996, cc. 737, 979; 1998, c. 87; 2004, c. 485.

§ 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.

1987, c. 677; 1989, c. 627; 1990, c. 581; 1992, c. 819; 1993, c. 375; 1996, c. 737; 1998, c. 87.

§ 62.1-44.34:13. 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.

1989, c. 627; 1992, c. 819; 1993, c. 422; 1995, c. 664; 1996, c. 737; 1998, c. 87; 1999, cc. 119, 124; 2000, cc. 729, 758.

Article 11 - DISCHARGE OF OIL INTO WATERS

§ 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.

1973, c. 417; 1976, c. 51; 1978, c. 816; 1990, c. 917; 1992, c. 456; 1994, c. 277; 1996, c. 737.

§ 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

or a vessel response plan applicable to the tank vessel and approved by the U.S. Coast Guard, pursuant to § 4202 of the federal Oil Pollution Act of 1990.

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 36 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 § 2.2-4019, 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.

1990, c. 917; 2004, c. 276.

§ 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 6, 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 6, 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.

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. For aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater existing prior to January 29, 1992, and located in the City of Fairfax, the Board shall establish performance standards for operators to bring aboveground storage tanks into substantial conformance with regulations adopted in accordance with subdivision 5. Operators shall meet such performance standards no later than July 1, 2021.

5. 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.

6. 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 30 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.

1992, c. 456; 1993, c. 353; 1994, c. 277; 1996, c. 737; 2011, cc. 883, 884.

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

A. The operator of any tank vessel entering upon state waters shall have a Certificate of Financial Responsibility approved by the U.S. Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990 or 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 $.05 per gallon of aboveground storage capacity or $5 million for a pipeline. In no instance shall any financial test of self-insurance require the operator of a facility to demonstrate more than $1 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 30 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 30 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.

1990, c. 917; 1992, cc. 456, 819; 1993, c. 375; 1994, c. 196; 1999, c. 91; 2004, c. 276.

§ 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 non-petroleum 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).

1990, c. 917; 1992, c. 456; 1994, cc. 277, 460.

§ 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.

1973, c. 417; 1976, c. 51; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962; 1992, c. 456; 1998, cc. 90, 836.

§ 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.

1978, c. 816; 1990, cc. 917, 962; 1992, c. 456.

§ 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.

1992, c. 456.

§ 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.

1992, c. 456.

§ 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 48 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 $32,500 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, as specified in § 62.1-44.15, 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 12 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 12 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 10 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 10 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 million; 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.

1990, c. 917; 1992, c. 456; 2005, c. 706.

§ 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 pro-

fessional 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.

1990, c. 917; 1992, c. 345.

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

The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and the proceedings of the Board under this article.

1990, c. 917.

§ 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.

1978, c. 816; 1987, c. 677; 1990, c. 917; 1992, cc. 302, 456; 1993, cc. 18, 231; 1994, c. 416.

Article 12 - VIRGINIA SPILL RESPONSE COUNCIL

§ 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.

1990, c. 598.

§ 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 and Homeland Security, 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 Wildlife Resources, 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.

1990, c. 598; 1991, c. 66; 2014, cc. 115, 490; 2020, c. 958.

§ 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 Secure and Resilient Commonwealth Panel.

1990, c. 598; 2011, cc. 594, 681.

§ 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.

1990, c. 598.

§ 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.

1990, c. 598.

Chapter 3.2 - Conservation of Water Resources; State Water Control Board

§ 62.1-44.35. Repealed.

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 the 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 policies that 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 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 shall 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, especially by localities with shared water supplies, 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 determines 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.

Code 1950, § 10-17.1; 1966, c. 561; 1972, c. 728; 2020, c. 1105.

§ 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.

Code 1950, § 10-17.2; 1966, c. 561; 1972, c. 728.

§ 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 the 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 the 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, and 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. 1. In preparing river basin plan and program reports enumerated in subsection A, 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 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) estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, the risk that each locality and region will experience water supply shortfalls; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

2. The Board shall direct the Department of Environmental Quality (the Department) in its facilitation of regional water planning efforts. The Department shall (i) ensure that localities coordinate sufficiently in the development of regional water plans; (ii) provide planning, policy, and technical assistance to each regional planning area, differentiated according to each area's water supply challenges, existing resources, and other factors; and (iii) ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks.

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 any other user. Location data shall be provided by each user in a coordinate system specified by the Board.

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. 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 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.

F. In addition to the preparation of plans called for in subsection A, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, including 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.

Code 1950, § 10-17.4; 1966, c. 561; 1972, c. 728; 1981, c. 633; 1989, c. 219; 2020, c. 1105.

§ 62.1-44.38:1. Comprehensive water supply planning process; state, regional, and local water supply plans.

A. The Board, with 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; (iii) encourage, promote, and develop incentives for alternative water sources, including desalinization; and (iv) encourage the development of cross-jurisdictional water supply projects.

B. The Board shall adopt regulations designating regional planning areas based primarily on river basins. The Board may, as appropriate, designate multiple regional planning areas within a single river basin in order to enhance the manageability of planning within such basin. The regulations shall identify the particular regional planning area in which each locality shall participate and shall state which local stakeholder groups, including local governments, industrial and agricultural water users,

public water suppliers, developers and economic development organizations, and conservation and environmental organizations, shall or may participate in coordinated water resource planning.

C. 1. Each locality in a regional planning area shall participate in cross-jurisdictional, coordinated water resource planning. Such local coordination shall accommodate existing regional groups that have already developed water supply plans, including planning district commissions, and other regional planning entities as appropriate.

2. Each locality in a regional planning area shall develop and submit, with the other localities in that planning area, a single jointly produced regional water supply plan to the Department of Environmental Quality (the Department). Such regional water supply plan shall (i) clearly identify the region's water supply risks and (ii) propose regional strategies to address those water supply risks.

3. Each regional water supply plan also shall comply with applicable 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. The criteria and guidelines established by the Board shall not prohibit a town from entering into a regional water supply plan with an adjacent county in the same regional planning area.

4. This section is intended to inform any regional water resource planning being done in the Commonwealth pursuant to interstate compacts.

D. The Board and the Department shall prioritize the allocation of planning funds and other funds to localities that sufficiently participate in regional planning.

E. In accordance with subdivision B 2 of § 62.1-44.38, the Department shall facilitate regional planning and provide assistance to each regional planning area as needed.

2003, c. 227; 2006, c. 18; 2020, c. 1105.

§ 62.1-44.38:2. Expired.

Expired.

§ 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.

Code 1950, § 10-17.4; 1966, c. 561; 1972, c. 728.

§ 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.

Code 1950, § 10-17.5; 1966, c. 561; 1972, c. 728; 1984, c. 734; 2004, c. 650.

§ 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.

Code 1950, § 10-17.6; 1966, c. 561; 1972, c. 728.

§ 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.

Code 1950, § 10-17.7; 1966, c. 561; 1972, c. 728.

§ 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 non-membership 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.

Code 1950, § 10-17.8; 1966, c. 561; 1972, c. 728; 1973, c. 450.

§ 62.1-44.44. Construction of chapter.
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.

Code 1950, § 10-17.9; 1966, c. 561; 1972, c. 728; 2013, cc. 756, 793.

Chapter 3.3 - STATE WATER RESOURCES LAW [Repealed]

§§ 62.1-44.45 through 62.1-44.82. Repealed.
Repealed by Acts 1974, c. 96.

Chapter 3.4 - THE GROUNDWATER ACT OF 1973 [Repealed]

§§ 62.1-44.83 through 62.1-44.87. Repealed.
Repealed by Acts 1992, c. 812.

§ 62.1-44.88. Repealed.
Repealed by Acts 1984, c. 734.

§§ 62.1-44.89 through 62.1-44.100. Repealed.
Repealed by Acts 1992, c. 812.

§ 62.1-44.101. Repealed.
Repealed by Acts 1986, c. 401.

§§ 62.1-44.101:1 through 62.1-44.105. Repealed.

Repealed by Acts 1992, c. 812.

§ 62.1-44.106. Repealed.

Repealed by Acts 1986, c. 615.

§ 62.1-44.107. Repealed.

Repealed by Acts 1992, c. 812.

Chapter 3.5 - FLOOD DAMAGE REDUCTION ACT [Repealed]

§§ 62.1-44.108 through 62.1-44.112. Repealed.

Repealed by Acts 1988, c. 891.

Chapter 3.6 - POTOMAC RIVER RIPARIAN RIGHTS ACT

§ 62.1-44.113. Short title.

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

1979, c. 307.

§ 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 the Compact of 1785 with Maryland, and confirmed by the Black-Jenkins Determination of 1877 and Article VII, § 1 of § 28.2-1001, cited as the Potomac River Compact of 1958.

1979, c. 307; 2005, c. 839.

§ 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.

1979, c. 307.

§ 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.

1979, c. 307.

Chapter 3.7 - CHESAPEAKE BAY AND VIRGINIA WATERS CLEAN-UP AND OVERSIGHT ACT

§ 62.1-44.117. Development of an impaired waters clean-up plan; strategies; objectives.

A. The Secretary of Natural Resources shall develop a plan for the cleanup of the Chesapeake Bay and Virginia's waters designated as impaired by the U.S. Environmental Protection Agency. The plan shall be revised and amended as needed to reflect changes in strategies, timetables, and milestones. Upon the request of the Secretary of Natural Resources, state agencies shall participate in the development of the plan.

B. The plan shall address both point and nonpoint sources of pollution and shall include, but not be limited to the following:

1. Measurable and attainable objectives for cleaning up the Chesapeake Bay and other impaired Virginia waters;

2. A description of the strategies to be implemented to meet specific and attainable objectives outlined in the plan;

3. Time frames or phasing to accomplish plan objectives and the expected dates of completion;

4. A clearly defined, prioritized, and sufficiently funded program of work within the plan both for point and nonpoint source clean-up projects;

5. A disbursement projection plan detailing the expenditures for point and nonpoint projects and whenever possible, a listing of the specific projects to which the funds are to be allocated;

6. Potential problem areas where delays in the implementation of the plan may occur;

7. A risk mitigation strategy designed to reduce the potential problems that might delay plan implementation;

8. A description of the extent of coordination between state and local governments in developing and achieving the plan's objectives;

9. Assessments of alternative funding mechanisms, that shall include but not be limited to the feasibility of utilizing the Virginia Resources Authority, that would address the needs of the Commonwealth to handle and appropriate state funds prudently and efficiently and address the needs of localities to achieve their goals in a timely and affordable manner; and

10. Recommendations to the oversight committees, as defined in § 62.1-44.118, for legislative action.

C. In reporting and documenting progress being made in clean-up efforts to the oversight committees, the plan shall include measures to assess the progress in accomplishing the program of work outlined in the plan. Special emphasis shall be given to the identification of trends that are either positively or negatively impacting plan accomplishment. These shall include, but are not limited to:

1. Stream miles added and removed from the 303(d) list under the federal Clean Water Act; waters meeting water quality standards; and total reductions of nitrogen, phosphorus, and sediment by tributary basin from point and nonpoint sources of pollution;

2. Scope of water quality monitoring of rivers, streams, estuaries, and lakes and the cumulative number of miles or acres assessed to evaluate the effectiveness of the efforts to restore impaired waters;

3. Number of best management practices (BMP) implemented; participation level in BMP cost-share programs; number of Total Maximum Daily Loads developed and implemented; local compliance levels with nonpoint programs, such as erosion and sediment control, stormwater management, and the Chesapeake Bay Preservation Act; number of wastewater treatment upgrades underway and number completed; and levels of compliance with nutrient-based permit limits; and

4. Updated or new strategies that would permit the optimal use of resources to meet plan objectives as the plan is revised over time.

For the purposes of this chapter "impaired waters" means those waters as defined in § 62.1-44.19:4.

2006, c. 204.

§ 62.1-44.118. Status reports on progress; legislative oversight.

The Secretary of Natural Resources shall submit the impaired waters clean-up plan as described in § 62.1-44.117 no later than January 1, 2007, to the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Finance. Thereafter, a progress report on the implementation of the plan shall be submitted annually to these committees of oversight. The report shall be due on November 1 of each year. Water quality reporting requirements in subsection D of § 10.1-2127, subsection C of § 10.1-2128.1, and § 10.1-2134 shall be annually consolidated in the November 1 report. If there are questions as to the status of the clean-up effort, the chairman of any of these committees may convene his committee for the purpose of receiving testimony. The executive branch departments and the Secretary of Natural Resources may request a meeting of any of the committees to inform them as to the progress of the clean-up or to propose specific initiatives that may require legislative action.

2006, c. 204; 2007, c. 637; 2011, c. 245; 2016, c. 127.

Chapter 4 - PUBLIC WATER SUPPLY [Repealed]

§§ 62.1-45 through 62.1-63. Repealed.

Repealed by Acts 1979, c. 711.

Chapter 5 - POTOMAC RIVER BASIN COMMISSION

§ 62.1-64. Authority to execute compact to create Potomac Valley Conservancy District and Interstate Commission on the Potomac River Basin.

The Governor is hereby authorized and directed to execute, on behalf of the Commonwealth of Virginia, a compact with the states of Maryland and West Virginia, the Commonwealth of Pennsylvania and the District of Columbia, or with such of the same as shall, by their respective legislative bodies,

enact legislation with like provisions to those of this chapter, but not with such of the same as shall not so enact such legislation, which compact shall be in form substantially as set out in § 62.1-65.

Code 1950, § 62-62; 1968, c. 659.

§ 62.1-65. Form and terms of compact.

Whereas it is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate stream; and

Whereas the Congress of the United States has given its consent to the states of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac River and the main and tributary streams therein, for the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes; and

Whereas the regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of federal, state, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district:

Now, therefore, the states of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac Valley Conservancy District, hereinafter designated the Conservancy District comprising all of the area drained by the Potomac River and its tributaries; and also, do hereby create, as an agency of each signatory body, the Interstate Commission on the Potomac River Basin, hereinafter designated the Commission, under the articles of organization as set forth below.

Article I

The Interstate Commission on the Potomac River Basin shall consist of three members from each signatory body and three members appointed by the President of the United States. Said Commissioners, other than those appointed by the President, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed and shall serve without compensation from the Commission but shall be paid by the Commission their actual expenses incurred and incident to the performance of their duties.

(A) The Commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice-chairman, shall adopt suitable bylaws, shall make, adopt, and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The Commission shall appoint and, at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The Commission may maintain one or more offices for the transaction of its business and may meet at any time or place within the area of the signatory bodies.

(C) The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The Commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the Commission.

(D) A quorum of the Commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the Commission who shall represent at least a majority of the signatory bodies; provided, however, that no action of the Commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the Commissioners from such signatory body shall vote in favor thereof.

Article II

The Commission shall have the power:

(A) To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the Conservancy District.

(B) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and federal, local governmental and nongovernmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said Conservancy District.

(C) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the Conservancy District and on the aims, views, purposes and recommendations of the Commission in relation thereto.

(D) To cooperate with, assist, and provide liaison for and among, public and nonpublic agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

(E) In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation, or development of water or associated land resources.

(F) (1) To make, and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the Conservancy District, and also, for cleanliness of the various streams in the Conservancy District.

(2) To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the District in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the Commission with its recommendations thereon.

The Commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the Commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the Commission.

It is agreed that after acceptance of such classification, the signatory body through its appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the Commission for classified waters. The Commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a manner similar to that in which these standards and classifications were originally established.

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, bathing and other recreational purposes, maintenance and propagation of fish life, industrial and agricultural uses, navigation and disposal of wastes.

Article III

For the purposes of dealing with the problems of pollution and of water and associated land resources in specific areas which directly affect two or more, but not all, signatory bodies, the Commission may establish sections of the Commission consisting of the Commissioners from such affected signatory bodies; provided, however, that no signatory body may be excluded from any section in which it wishes to participate. The Commissioners appointed by the President of the United States may

participate in any section. The Commission shall designate, and from time to time may change, the geographical area with respect to which each section shall function. Each section shall, to such extent as the Commission may from time to time authorize, have authority to exercise and perform with respect to its designated geographical area any power or function vested in the Commission, and in addition may exercise such other powers and perform such functions as may be vested in such section by the laws of any signatory body or by the laws of the United States. The exercise or performance by a section of any power or function vested in the Commission may be financed by the Commission, but the exercise or performance of powers or functions vested solely in a section shall be financed through funds provided in advance by the bodies, including the United States, participating in such section.

Article IV

The moneys necessary to finance the Commission in the administration of its business in the Conservancy District shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contribution shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge, as shall be determined from time to time by the Commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

Article V

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the Conservancy District and in planning for the utilization, conservation and development of the water and associated land resources thereof.

2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

3. The appropriation of biennial sums on the proportionate basis as set forth in Article IV.

Article VI

This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the states of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and by the Commissioners of the District of Columbia, and approved by the Congress of the United States; provided, however, that this compact shall not be effective as to any signatory body until ratified thereby.

Article VII

Any signatory body may, by legislative act, after one year's notice to the Commission, withdraw from this compact.

Code 1950, § 62-63; 1968, cc. 542, 659.

§ 62.1-66. Potomac River Basin Commission of Virginia.

There is hereby created a Commission of three members to be known as the Potomac River Basin Commission of Virginia, but the Commission shall not come into being unless and until the Governor shall have executed the compact hereinabove authorized.

Code 1950, § 62-64; 1968, c. 659.

§ 62.1-67. Appointment, terms and qualifications of members; alternate members.

The Commission shall consist of three members as follows: one legislative member of the Commission on Intergovernmental Cooperation who resides in the Potomac River drainage basin, appointed by the Joint Rules Committee; one nonlegislative citizen member at large who resides in the Potomac River drainage basin, appointed by the Governor; and the executive director of the State Water Control Board. Appointments to fill vacancies shall be made for the respective unexpired terms. One of the members shall be designated by the Governor as chairman. The Governor and the Joint Rules Committee shall appoint alternate members for their appointees to the Commission, who shall reside in the Potomac River drainage basin, and each alternate shall have power to act in the absence of the person for whom he is alternate. The legislative member and executive director of the State Water Control Board shall serve terms coincident with their terms of office and the member appointed by the Governor shall serve a term of four years. The terms of each alternate shall run concurrently with the term of the member for whom he is alternate. All members may be reappointed.

Code 1950, § 62-65; 1968, cc. 542, 659; 1979, c. 114; 1981, c. 308; 2006, cc. 516, 556.

§ 62.1-68. Expenses of members.

The members of the Commission shall be paid their expenses incurred in the performance of their duties as such in such manner and amount as shall be provided in the compact hereinabove authorized to be executed.

Code 1950, § 62-66; 1968, c. 659.

§ 62.1-69. Duties of Commission; powers and duties of Water Control Board not affected; dams or structures for production of electric power.

The Potomac River Basin Commission of Virginia shall, if and when it shall come into existence as hereinabove provided, act jointly with commissions appointed for a like purpose by the states of West Virginia and Maryland, the Commonwealth of Pennsylvania and the District of Columbia, or by such of the same as shall enter into the compact and with an additional three members to be appointed by the President of the United States, as a unit of the Interstate Commission on the Potomac River Basin which shall be constituted as provided by the compact hereinabove mentioned. The Potomac River Basin Commission of Virginia shall perform such further duties as shall be provided by the compact.

No provision of this chapter or application thereof shall operate to repeal, limit, affect or impair any provision or application of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1; and no provision of this chapter shall have any effect upon the powers and duties of the State Water Control Board created by Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 and the operation of such Board over the waters of the Commonwealth subject to its jurisdiction. Members of the Potomac River Basin Commission of Virginia are prohibited from voting in favor of any measure before the Interstate Potomac River Basin Commission which might have any effect upon the powers and duties of the State Water Control Board without the consent of such Board first had and obtained. Members of the Potomac River Basin Commission of Virginia are prohibited from voting in favor of the construction, with public funds, of any dam or other structure upon the Potomac River or its tributaries in Virginia, which dam or other structure is used or is capable of being used, directly or indirectly, in whole or in part and whether as a single or multiple purpose, for the production by any government or any agency or instrumentality thereof, of electric power and energy.

Code 1950, § 62-67; 1968, cc. 542, 659.

Chapter 5.1 - POTOMAC RIVER BASIN COMPACT [Repealed]

§§ 62.1-69.1 through 62.1-69.4. Repealed.

Repealed by Acts 1990, c. 179.

Chapter 5.2 - CHESAPEAKE BAY COMMISSION

§§ 62.1-69.5 through 62.1-69.20. Repealed.

Repealed by Acts 2004, c. 1000.

Chapter 5.3 - RAPPAHANNOCK RIVER BASIN COMMISSION

§ 62.1-69.25. Definitions.

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

"Rappahannock River Basin" means that land area designated as the Rappahannock River Basin by the State Water Control Board pursuant to § 62.1-44.38 and which is also found in the Fourth, Seventeenth, Twenty-fourth, Twenty-sixth, Twenty-seventh, and Twenty-eighth Senatorial Districts or the Eighteenth, Twenty-eighth, Thirtieth, Thirty-first, Fifty-fourth, Fifty-eighth, Eighty-eighth, Ninety-eighth, and Ninety-ninth House of Delegates Districts, as those districts exist on January 1, 2012.

1998, c. 553; 2000, cc. 386, 456; 2002, cc. 496, 523; 2013, c. 173.

§ 62.1-69.26. Rappahannock River Basin Commission; establishment.

The Rappahannock River Basin Commission, hereinafter referred to as the "Commission," is hereby created as an independent local entity without political subdivision status, and shall be established upon passage by two-thirds of the Rappahannock River Basin's localities of a resolution that commits them to participate in the Commission as described in this chapter. The resolution shall contain the following language:

"The (jurisdiction's governing body) does hereby agree to become a member of and participate in the Rappahannock River Basin Commission as described in Chapter 553 of the Acts of Assembly of 1998."

1998, c. 553; 2000, cc. 386, 456; 2004, c. 471.

§ 62.1-69.27. Commission purposes and mission.

The Commission's purposes and mission shall be to provide guidance for the stewardship and enhancement of the water quality and natural resources of the Rappahannock River Basin. The Commission shall be a forum in which local governments and citizens can discuss issues affecting the Basin's water quality and quantity and other natural resources. Through promoting communication, coordination and education, and by suggesting appropriate solutions to identified problems, the Commission shall promote activities by local, state and federal governments, and by individuals, that foster resource stewardship for the environmental and economic health of the Basin.

1998, c. 553; 2000, cc. 386, 456.

§ 62.1-69.28. Rappahannock River Basin Commission powers.

A. The Commission shall have no regulatory authority.

B. To carry out its purposes and mission, the Commission shall have the power to:

1. Communicate, including through legislative recommendations, Commission views to local, state and federal legislative and administrative bodies, and to others as it deems necessary and appropriate.

2. Undertake studies and prepare, publish and disseminate information in reports and in other forms related to the water quality and natural resources of the Basin and to further its purposes and mission.

3. Enter into contracts and execute all instruments necessary or appropriate.

4. Perform any lawful acts necessary or appropriate.

5. Establish a nonprofit corporation as an instrumentality to assist in the details of administering its affairs and in raising funds.

6. Seek, apply for, accept and expend gifts, grants and donations, services and other aids, from public or private sources. Other than those from member jurisdictions and those appropriated by the General Assembly, funds may be accepted by the Commission only after an affirmative vote by the Commission or by following such other procedure as may be established by the Commission for the conduct of its business.

7. Establish balanced advisory committees that may include representation from agricultural, environmental, resources-based, industrial, recreational, riparian landowner, development, educational and other interests as it deems necessary and appropriate.

8. Develop rules and procedures for the conduct of its business or necessary to carry out its purposes and mission, including, but not limited to, selecting a chair and vice-chairs, rotating chairmanships,

calling meetings and establishing voting procedures. Rules and procedures developed pursuant to this subdivision shall be effective upon an affirmative vote by a majority of the Commission members.

1998, c. 553; 2000, cc. 386, 456.

§ 62.1-69.29. Membership; terms; vacancies.

The membership of the Commission shall consist of 32 members, which includes 15 legislative members and 17 nonlegislative citizen members, to be appointed as follows: nine members of the House of Delegates, one member each of the Eighteenth, Twenty-eighth, Thirtieth, Thirty-first, Fifty-fourth, Fifty-eighth, Eighty-eighth, Ninety-eighth, and Ninety-ninth House of Delegates Districts, as those districts existed on January 1, 2012; six members of the Senate, one member each of the Fourth, Seventeenth, Twenty-fourth, Twenty-sixth, Twenty-seventh, and Twenty-eighth Senatorial Districts, as those districts existed on January 1, 2012; one member or designee of each of the 16 governing bodies of the jurisdictions in which not less than two percent of the jurisdiction is found wholly or partially within the Rappahannock River Basin, that at any time pass a resolution containing the language required by § 62.1-69.26, to be appointed by the respective local governing body; and one member or designee of a Soil and Water Conservation District found wholly or partially within the Rappahannock River Basin, to be appointed jointly by the Soil and Water Conservation Districts found wholly or partially within the Rappahannock River Basin. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth of Virginia.

All members of the Commission shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. Vacancies shall be filled in the same manner as the original appointments.

For the purposes of this section, "nonlegislative citizen member" means a member of one of the local governing bodies or the Soil and Water Conservation Districts of the jurisdictions found wholly or partially within the Rappahannock River Basin.

1998, c. 553; 2000, cc. 386, 456; 2004, c. 471; 2009, c. 601; 2013, c. 173.

§ 62.1-69.30. Chairman and vice-chairman; quorum; meetings.

The Commission shall elect a chairman and vice-chairman from among its membership. Eleven members of the Commission shall constitute a quorum. The Commission shall meet no more than four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request. Each member of the Commission shall have an equal vote.

1998, c. 553; 2000, cc. 386, 456; 2004, c. 471; 2013, c. 173.

§ 62.1-69.31. Staffing and support.

The local governing bodies and Planning District Commissions found wholly or partially in the Rappahannock River Basin shall provide staff support for the Commission as the localities determine appropriate. Additional staff support may be hired or contracted for by the Commission through funds

raised by or provided to it. The Commission is authorized to determine the duties of such staff and fix staff compensation within available resources.

All agencies of the Commonwealth shall cooperate with the Commission and, upon request, shall assist the Commission in fulfilling its purposes and mission. The Secretary of Natural Resources or his designee shall act as the chief liaison between the administrative agencies and the Commission.

1998, c. 553; 2000, cc. 386, 456.

§ 62.1-69.32. Withdrawal; dissolution.

A. A locality may withdraw from the Commission one year after providing a written notice to the Commission of its intent to do so.

B. The Commission may dissolve itself upon a two-thirds vote of all members.

C. The Commission may be dissolved by repeal or expiration of this chapter.

D. The Commission shall be dissolved if the membership of the Commission falls below two-thirds of those eligible.

E. Upon the Commission's dissolution, all funds and assets of the Commission shall be divided on a pro rata basis. The Commonwealth's share of the funds and assets shall be transferred to the Office of the Secretary of Natural Resources for appropriate distribution.

1998, c. 553; 2000, cc. 386, 456.

§ 62.1-69.33. Funding.

A. The Commission shall annually adopt a budget, which shall include the Commission's estimated expenses. The funding of the Commission shall be a shared responsibility of state and local governments. The Commonwealth's contribution shall be set through the normal state appropriations process. The Commission's local government members shall determine a process for distribution of costs among the local government members.

B. The Commission shall annually designate a fiscal agent.

C. The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by similar enterprises. The accounts and records of the Commission shall be subject to an annual audit by the Auditor of Public Accounts or his legal representative, and the costs of such audit services shall be borne by the Commission. The results of the audits shall be delivered to the chief elected officer in each of the Commission's member jurisdictions, the members of the House of Delegates and the Senate who serve on the Commission, the chairmen of the House Appropriations Committee and the Senate Finance Committee, and the Secretary of Natural Resources. The Commission's fiscal year shall be the same as the Commonwealth's.

1998, c. 553; 2000, cc. 386, 456.

§ 62.1-69.33:1. Compensation; expenses.

Notwithstanding any law to the contrary, members of the Commission shall not be eligible for compensation. All members may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties from such funds as may be available to the Commission.

2004, c. 471.

§ 62.1-69.33:2. Chairman's executive summary of activity and work of the Commission.

The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

2004, c. 471.

Chapter 5.4 - VIRGINIA ROANOKE RIVER BASIN ADVISORY COMMITTEE

§ 62.1-69.34. Virginia Roanoke River Basin Advisory Committee established; purpose; membership; terms; meetings.

A. The Virginia Roanoke River Basin Advisory Committee, hereinafter referred to as the "Committee," is hereby established in the executive branch of state government as an advisory committee to the Virginia delegation to the Roanoke River Basin Bi-State Commission. The Committee shall assist the delegation in fulfilling its duties and carrying out the objectives of the Commission, pursuant to § 62.1-69.39. The advisory committee shall be composed of 23 members as follows: two members of the Senate, whose districts include a part of the Virginia portion of the Roanoke River Basin, to be appointed by the Senate Committee on Rules; four members of the House of Delegates, whose districts include a part of the Virginia portion of the Roanoke River Basin, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one nonlegislative citizen member at large appointed by the Senate Committee on Rules; one nonlegislative citizen member at large appointed by the Speaker of the House of Delegates; 11 nonlegislative citizen members selected by the legislative members of the advisory committee such that two are chosen from recommendations of each of the following: the Central Virginia Planning District Commission, the West Piedmont Planning District Commission, the Southside Planning District Commission, the Piedmont Planning District Commission, and the Roanoke Valley Alleghany Planning District Commission; and one member selected by the legislative members of the advisory committee from among recommendations submitted by the New River Valley Planning District Commission; and the Virginia member of the United States House of Representatives, whose district includes the largest portion of the Basin, or his designee, and three representatives of the State of North Carolina appointed in a manner as the General Assembly of North Carolina may determine appropriate. Except for the representatives of North Carolina, all nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. The Virginia member of the United States House of

Representatives, the members of the Virginia General Assembly, and the representatives of North Carolina shall serve ex officio without voting privileges. Of the recommendations submitted by planning district commissions authorized to recommend two members, one member shall be a nonlegislative citizen who resides within the respective planning district. However, the New River Valley Planning District Commission may recommend either one nonlegislative citizen at large who resides within the planning district or one member, who at the time of the recommendation, is serving as an elected member or an employee of a local governing body, or one member of the board of directors or an employee of the planning district commission. All persons recommended by the planning district commissions to serve as members of the advisory committee shall reside within the Basin's watershed, represent the diversity of interests in the jurisdictions comprising the respective planning district commissions, and demonstrate interest, experience, or expertise in water-related Basin issues.

B. State and federal legislative members and local government officials appointed to the advisory committee shall serve terms coincident with their terms of office. Nonlegislative citizen members appointed by the Senate Committee on Rules and the Speaker of the House of Delegates to serve on the advisory committee, and ex officio members representing the State of North Carolina shall serve a term of two years. Initially, planning district commissions authorized to recommend two nonlegislative citizen members to the advisory committee shall recommend one member for a term of two years and one member for a term of one year. However, the nonlegislative citizen member recommended to serve on the advisory committee by the New River Valley Planning District Commission shall serve a term of one year. After the initial staggering of terms, the term of office of nonlegislative citizen members recommended by the planning district commissions shall be for two years. Nonlegislative citizen members recommended by planning district commissions shall be eligible for reappointment, if such members shall have attended at least one-half of all meetings of the Commission during their current term of service. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointment.

The advisory committee shall elect a chairman and a vice-chairman from among its voting members. A majority of the voting members shall constitute a quorum. The meetings of the advisory committee shall be held at the call of the chairman or whenever the majority of the voting members so request.

2002, cc. 657, 843; 2003, c. 885; 2004, c. 403; 2010, cc. 394, 729.

§ 62.1-69.35. Compensation and expenses.

Legislative members of the advisory committee shall receive such compensation as provided in § 30-19.12, and nonlegislative members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of members shall be paid from such funds as may be provided to the Department of Environmental Quality in the appropriations act for this purpose.

2002, c. 843; 2003, c. 885.

§ 62.1-69.35:1. Staffing.

The Department of Environmental Quality shall provide staff support to the advisory committee. All agencies of the Commonwealth shall provide assistance to the advisory committee, upon request.

2003, c. 885.

§ 62.1-69.35:2. Chairman's executive summary of activity and work of the advisory committee.
The chairman of the advisory committee shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the advisory committee no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

2003, c. 885.

Chapter 6 - OHIO RIVER VALLEY WATER SANITATION COMMISSION

§ 62.1-70. Governor to execute Ohio River Valley Water Sanitation Compact.
The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, the Ohio River Valley Water Sanitation Compact which the Commonwealth of Virginia has been invited to join. The compact is in the words and figures set out in § 62.1-71.

Code 1950, § 62-67.1; 1968, c. 659.

§ 62.1-71. Form and terms of compact.
Whereas, a substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio River;

Whereas, the rapid increase in the population of the various metropolitan areas situated within the Ohio drainage basin and the growth in industrial activity within that area have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

Whereas, the control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof and can best be accomplished through the cooperation of the states situated therein, by and through a joint or common agency;

Now, therefore, the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia, do hereby covenant and agree as follows:

Article I.

Each of the signatory states pledges to each of the other signatory states faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the Ohio River Basin which flow through, into or border upon any of such signatory states, and in order to effect such object agrees to enact any necessary legislation to enable each such state to police and maintain the waters of that basin in a satisfactory sanitary condition, available for safe and satisfactory

use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

Article II.

The signatory states hereby create a district to be known as the "Ohio River Valley Water Sanitation District," hereinafter called the district, which shall embrace all territory within the signatory states, the water in which flows ultimately into the Ohio River, or its tributaries.

Article III.

The signatory states hereby create the "Ohio River Valley Water Sanitation Commission," hereinafter called the Commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states or by act or acts of the Congress of the United States.

Article IV.

The Commission shall consist of three commissioners from each state, each of whom shall be a citizen of the state from which he is appointed, and three commissioners representing the United States government. The commissioners from each state shall be chosen in the manner and for the terms provided by the laws of the state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the state from which he shall be appointed. The Commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by Congress. The Commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any state or of the United States government.

Article V.

The Commission shall elect from its number a chairman and vice-chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. It shall adopt a seal and suitable bylaws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the district for the transaction of its business, and may meet at any time or place. One or more commissioners from a majority of the member states shall constitute a quorum for the transaction of business.

The Commission shall submit to the governor of each state, at such time as he may request, a budget of its estimated expenditures, for such period as may be required by the laws of such state for presentation to the legislature thereof.

The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and such books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory states as are duly constituted for that purpose.

On or before the first day of December of each year, the Commission shall submit to the respective governors of the signatory states a full and complete report of its activities for the preceding year.

The Commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory states, except by and with the authority of the legislature thereof.

Article VI.

It is recognized by the signatory states that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the district due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the district. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory state shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

All sewage from municipalities or other political subdivisions, public or private institutions, or corporations, discharged or permitted to flow into these portions of the Ohio River and its tributary waters which form boundaries between, or are contiguous to, two or more signatory states, or which flow from one signatory state into another signatory state, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids and the removal of not less than forty-five per centum of the total suspended solids; provided that, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, due notice and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, to such degree as may be determined to be necessary by the Commission after investigation, due notice and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one state shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately above the confluence.

The Commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article.

Article VII.

Nothing in this compact shall be construed to limit the powers of any signatory state, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

Article VIII.

The Commission shall conduct a survey of the territory included within the district, shall study the pollution problems of the district, and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the Commission shall confer with any national or regional planning body which may be established, and any department of the federal government authorized to deal with matters relating to the pollution problems of the district. The Commission shall draft and recommend to the governors of the various signatory states uniform legislation dealing with the pollution of rivers, streams and waters and other pollution problems within the district. The Commission shall consult with and advise the various states, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly, with regard to the construction of plants for the disposal of sewage, industrial and other waste. The Commission shall, more than one month prior to any regular meeting of the legislature of any state which is a party thereto, present to the governor of the state its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of this compact.

Article IX.

The Commission may from time to time after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio River, or any other river, stream or water, any part of which constitutes any part of the boundary line between any two or more of the signatory states, or into any stream any part of which flows from any portion of one signatory state through any portion of another signatory state. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of. The Commission shall give reasonable notice of the time and place of the hearing to the municipality, corporation or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each or not less than a majority of the signatory states; and no such order upon a municipality, corporation, person or entity in any state shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

It shall be the duty of the municipality, corporation, person or other entity to comply with any such order issued against it or him by the Commission, and any court of general jurisdiction or any United States district court in any of the signatory states shall have the jurisdiction, by mandamus, injunction, specific performance or other form of remedy to enforce any such order against any municipality, corporation or other entity domiciled or located within such state or whose discharge of the waste takes place within or adjoining such state, or against any employee, department or subdivision of such

municipality, corporation, person or other entity; provided, that such court may review the order and affirm, reverse or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The Commission or, at its request, the Attorney General or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

Article X.

The signatory states agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the governors of the signatory states, one half of such amount to be prorated among the several states in proportion of their population within the district at the last preceding federal census, the other half to be prorated in proportion to their land area within the district.

Article XI.

This compact shall become effective upon ratification by the legislatures of a majority of the states located within the district and upon approval by the Congress of the United States; and shall become effective as to any additional states signing thereafter at the time of such signing.

Code 1950, § 62-67.2; 1968, c. 659.

§ 62.1-72. Effect of signing compact.

The Commonwealth of Virginia, hereby through the signature of its Governor hereto, adds its name to those of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia as the parties to and signatory states of the foregoing Ohio River Valley Water Sanitation Compact, and hereby covenants and agrees as hereinabove set forth in such compact.

The signature by the Governor of Virginia, to the foregoing compact on behalf of the Commonwealth of Virginia, shall bind the Commonwealth and indicate its assent to and acceptance of the terms and conditions of such compact.

Code 1950, § 62-67.3; 1968, c. 659.

§ 62.1-73. Appointment and removal of Virginia members of Commission.

In pursuance of Article IV of said compact there shall be three members of the Ohio River Valley Water Sanitation Commission from Virginia. Two members of the Commission shall be appointed by the Governor, subject to confirmation by the General Assembly, from the membership of the State Water Control Board continued under § 62.1-44.7. The term of the commissioner shall be coincident with that of his term upon the State Water Control Board. Any vacancy in the office of the commissioner shall be filled by appointment by the Governor. The third Virginia member of the Commission shall be the Director of the Department of Environmental Quality. Any member of the Commission appointed pursuant to this section who cannot be present at a meeting of the Commission, or at any committee or subcommittee of the Commission, may designate any employee of the

Department of Environmental Quality or a member of the State Water Control Board to attend the meeting and vote on his behalf.

Any commissioner may be removed from office by the Governor.

Code 1950, § 62-67.4; 1968, c. 659; 2005, c. 517; 2009, c. 467; 2013, cc. 756, 793.

§ 62.1-74. Powers of Commission; duties of state officers, departments, etc.; jurisdiction of certain courts; enforcement.

Subject to the terms of such compact there is hereby granted to the Commission and commissioners thereof all the powers provided for in the compact, and all the powers necessary or incidental to the carrying out of the compact in every particular. All officers of this Commonwealth are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of the compact in every particular, it being hereby declared to be the policy of this Commonwealth to perform and carry out the compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of this Commonwealth are hereby authorized and directed at convenient times and upon request of the Commission to furnish it with information and data possessed by them or any of them and to aid the Commission by loan of personnel or other means lying within their legal powers, respectively.

The courts of record of this Commonwealth are hereby granted the jurisdiction specified in Article IX of the compact, and the Attorney General and other law enforcing officers of this Commonwealth are hereby granted the power to institute any action for the enforcement of the orders of the Commission as specified in Article IX of the compact.

Code 1950, § 62-67.5; 1968, c. 659.

§ 62.1-75. Powers granted Commission are supplemental.

Any powers herein granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in the Commission by other laws of this Commonwealth or by the laws of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, West Virginia, Tennessee, or by Congress, or by the terms of the compact.

Code 1950, § 62-67.6; 1968, c. 659.

§ 62.1-76. Expenses of members.

The commissioners shall be reimbursed out of moneys appropriated for such purposes all sums which they necessarily expend in the discharge of their duties as members of such Commission.

Code 1950, § 62-67.7; 1968, c. 659.

§ 62.1-77. Officers and employees; meetings.

The Commission shall elect from its membership a chairman, and may also select a secretary who need not be a member. The Commission may employ such assistants as it deems necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the Commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of the Commission.

The Commission shall meet at times and places agreed upon by the commissioners or upon call of its chairman.

Code 1950, § 62-67.8; 1968, c. 659.

§ 62.1-77.1. Repealed.

Repealed by Acts 2005, c. 517, cl. 2.

§ 62.1-78. Chapter effective in due course, upon signature of Governor.

This chapter shall become effective in due course provided the Governor signs the compact heretofore referred to on behalf of the Commonwealth.

Code 1950, § 62-67.9; 1968, c. 659.

§ 62.1-79. Appropriations.

The sums appropriated to carry out the purposes of this chapter shall be used to effect its provisions and to pay Virginia's proportionate part of the budget of the Ohio River Valley Water Sanitation Commission in accordance with Article X of the compact. No part of any such appropriation shall be available for expenditure in whole or in part unless and until the Comptroller shall be annually satisfied that each of the governmental entities having representatives on the Ohio River Valley Water Sanitation Commission has provided for the expenses thereof at least as much as is appropriated by the General Assembly of Virginia for the purposes of this chapter.

Code 1950, § 62-67.10; 1968, c. 659.

Chapter 6.1 - OHIO RIVER BASIN COMMISSION [Repealed]

§§ 62.1-79.1, 62.1-79.2. Repealed.

§§ 62.1-79.1, 62.1-79.2. Repealed by Acts 2017, c. 128, cl. 1.

Chapter 7 - WATER-POWER DEVELOPMENT, CONSERVATION OF HYDROELECTRIC POWER DAMS AND WORKS

§ 62.1-80. Declaration of public policy.

In order to conserve and utilize the otherwise wasted energy from the water powers in this Commonwealth, it is hereby declared to be the policy of the Commonwealth to encourage the utilization of the water resources in the Commonwealth to the greatest practicable extent and to control the waters of the Commonwealth, as herein defined, and also the construction or reconstruction of a dam in any

rivers or streams within the Commonwealth for the generation of hydroelectric energy for use or sale in public service, all as hereinafter provided.

Code 1950, § 62-68; 1968, c. 659.

§ 62.1-80.1. Applicability of chapter.

The provisions of this chapter shall apply only to public utilities as defined in § 56-232.

1981, c. 557.

§ 62.1-81. "Waters of the Commonwealth" defined.

The term "waters of the Commonwealth" as used in this chapter shall mean: (a) Any stream or that portion of any stream in this Commonwealth which prior to June 21, 1932, has been declared navigable by any unrepealed statute of this Commonwealth, or (b) any stream or that portion of any stream in this Commonwealth, the bed of which is owned by the Commonwealth, or (c) those parts of streams or other bodies of water in this Commonwealth which either in their natural or improved condition, notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids, compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows or rapids, and also any stream or part thereof in this Commonwealth other than those above mentioned in this subdivision in which the construction of any dam or works as authorized by this chapter would affect the interests of interstate or foreign commerce, or (d) that portion of any river or stream flowing between the high-water mark on the Virginia shore and the low-water mark when such low-water mark constitutes the boundary line between Virginia and another state.

Code 1950, § 62-69; 1956, c. 229; 1968, c. 659.

§ 62.1-82. Control and regulation by State Corporation Commission; existing rights of riparian owners.

The control and regulation on the part of the Commonwealth of the development of the waters of the Commonwealth shall be paramount, and shall be exercised through the agency of the State Corporation Commission, sometimes in this chapter referred to as the Commission; provided, however, nothing contained in this chapter shall deprive any riparian owner of any right which he may have, under existing law, except by due and further process of law upon the exercise of eminent domain and upon the payment of just compensation for any such right.

Code 1950, § 62-70; 1968, c. 659.

§ 62.1-83. Dams across waters of Commonwealth.

No person, firm, association or corporation, private or municipal, proposing to construct or reconstruct any dam across or in the waters of the Commonwealth, as defined in § 62.1-81, or a dam in any rivers or streams within the Commonwealth when such dam is for the purpose of generating hydroelectric energy for use or sale in public service, shall begin the construction or reconstruction of any such dam unless and until the provisions of this chapter shall have been complied with, and every such dam shall in every respect be subject to the provision of this chapter and such other general laws of the

Commonwealth as may be applicable thereto. Nor shall any dam constructed or reconstructed after July 1, 1932, in any waters, rivers or streams within the Commonwealth, without a license under this chapter, be utilized at any time for the purpose of generating hydroelectric energy for use or sale, directly or indirectly, in public service, unless and until licensed or permitted so to do by order of the State Corporation Commission, after hearing, and finding that the public interest will be thereby promoted or will not be detrimentally affected.

Code 1950, § 62-71; 1968, c. 659.

§ 62.1-84. What "dam" includes.

The word "dam" as used in this chapter is intended to include the appurtenant pondage area or any part thereof.

Code 1950, § 62-72; 1968, c. 659.

§ 62.1-85. License required to construct dam; application.

The construction or reconstruction of any such dam as is mentioned in § 62.1-83 shall not be begun until the person, firm, association, corporation, private or municipal, or public utility as defined in § 56-232 proposing to construct or reconstruct the same shall first obtain a license so to do from the State Corporation Commission. The application for such license shall be filed with the Commission and in it all the essential facts shall be stated to enable the Commission to pass upon its merits. A copy of such application shall also be filed by the applicant with the Executive Director of the State Water Control Board within ten days after filing such application with the State Corporation Commission. Each application for license shall be accompanied by such maps, plans and other information as may be necessary to give a clear and full understanding of the proposed scheme of development, and of dams, generating stations or other major structures, if any, involved therein.

Code 1950, § 62-73; 1968, c. 659; 1982, c. 183.

§ 62.1-86. Notice of hearing on application.

As soon as practicable after the filing with the State Corporation Commission of any application for a license under the provisions of this chapter, the Commission shall set a day for a public hearing upon such application, and the applicant shall give notice to the public of the application, in form to be prescribed or approved by the Commission, by publication once in each week for four successive weeks prior to such hearing in a newspaper or newspapers of general circulation published in the city or county wherein the proposed construction, or the greater part thereof, is to be made and any adjoining or connecting county or city affected and every other county downstream from such development through which the stream runs to its mouth, if there be such newspaper, and, if there be no such newspaper, then by publishing the same in a newspaper of general circulation in such county or counties or cities affected. In such notice the date fixed by the Commission for the public hearing on the application shall be stated.

Code 1950, § 62-74; 1968, c. 659.

§ 62.1-87. Proceedings at hearing.

At such public hearing the applicant and any other interested person, firm, association or corporation shall be given an opportunity to present facts, evidence and argument for and against the granting of the application.

Code 1950, § 62-75; 1968, c. 659.

§ 62.1-88. Determination and investigation by Commission.

Before acting upon any application, the Commission shall weigh all the respective advantages and disadvantages from the standpoint of the Commonwealth as a whole and the people thereof and shall make such investigation as may be appropriate as to the effect of the proposed construction upon any cities, towns and counties and upon the prospective development of other natural resources and the property of others.

Code 1950, § 62-76; 1968, c. 659.

§ 62.1-89. When license granted.

If the Commission shall be of the opinion from all the evidence before it that, in pursuance of the herein expressed policy of the Commonwealth to encourage water-power development, the plans of the applicant provide for the greatest practicable extent of utilization of the waters of the Commonwealth for which the application is made and that the applicant is financially able to construct and operate the proposed dam and works and that the general public interest will be promoted thereby, it shall grant the license to construct and operate the proposed dam and works.

Code 1950, § 62-77; 1968, c. 659.

§ 62.1-90. Rejection of application; requiring applicant to modify plans.

If the Commission be of the opinion, from the evidence before it, that the prospective scheme of development is inadequate or wasteful or that the applicant is financially unable to construct and operate the proposed dam and works, or that it is prejudicial to the public interest, the Commission may require the applicant to modify the plans for the development in such manner as may be specified by the Commission or the Commission may reject the application.

Code 1950, § 62-78; 1968, c. 659.

§ 62.1-91. Terms and conditions of license; preventing obstruction of navigation or flow; dams across navigable waters of United States.

In granting any license the Commission may include in the grant thereof such terms and conditions with respect to the character of construction, operation and maintenance of the proposed dam and works as may be reasonably necessary in the opinion of the Commission in the interest of public safety; and in granting every such license the Commission shall determine what provision, if any, shall be made by the licensee to prevent the unreasonable obstruction of then existing navigation or any unreasonable interference with stream flow. In the case of a dam located across any navigable waters of the United States, the owner shall make such provision for navigation as is required by the Secretary of the Army of the United States.

Code 1950, § 62-79; 1968, c. 659.

§ 62.1-92. Priority of location or appropriation; notice to owners of existing developments.

No priority of location or appropriation shall be recognized by the Commission in its consideration of any application for a license, under this chapter, except that in case of an application for a license for any reconstruction or enlargement of any existing development, the owner of such development shall be entitled to priority over any other applicant for a license for the construction of a development which would materially affect such existing development, and every such applicant for a license under this chapter shall give notice of his application within ten days after filing of the same with the State Corporation Commission to every other person, firm, association or corporation owning any other development which might be affected thereby, whose application for a license under this chapter would be entitled to priority if such application were filed. In case of conflict between two or more applicants, the Commission may grant the license to such applicant as it may deem best in the light of the considerations herein specified.

Code 1950, § 62-81; 1968, c. 659.

§ 62.1-93. Time limits on construction of proposed dam and works.

With respect to any license which may be granted, the Commission shall prescribe a time limit of not more than two years after the granting of such license for the commencement of the construction of the proposed dam and works of the applicant and of not more than five years after the granting of such license for the completion of such dam and works, either or both of which initial time limits may be extended for good cause from time to time in the discretion of the Commission.

Code 1950, § 62-82; 1968, c. 659.

§ 62.1-94. Duration of licenses; acquisition of developments by Commonwealth.

All licenses granted under the provisions of this chapter shall remain in effect for a period of fifty years from and after the date of granting thereof. From and after the expiration of such terms of fifty years the licensee, its successors and assigns, shall hold the property and rights acquired under the authority of this chapter under an indeterminate license, which shall continue until such property and rights have been purchased by the Commonwealth, or until the same have been acquired by the Commonwealth by due process of law; provided that the right of the Commonwealth to take over, maintain and operate any development licensed under this chapter at any time by condemnation proceedings, upon payment of just compensation, is hereby expressly reserved.

Code 1950, § 62-83; 1968, c. 659.

§ 62.1-95. Value of license not to be estimated in valuation for rate making, etc.; intangible waterpower value.

In any valuation, for the purpose of rate making or for the purpose of acquisition by the Commonwealth by condemnation or by purchase as above provided for, or the property included in any development licensed under this chapter, there shall not be claimed by the licensee or allowed by the State Corporation Commission any value for the license granted by the Commonwealth for such development, or for the right of the licensee to utilize the natural resources owned by the Commonwealth and used

by the licensee in connection with the construction, maintenance and operation of such development, nor shall there be claimed or allowed any appreciation on the intangible water-power value in excess of the fair intangible water-power value at the time of the granting of the license for the construction of such development, such intangible water-power value being distinguished from the value of land or an interest in land, or the right to flood or damage or otherwise utilize land, or to interfere with or to divert water, or to otherwise damage a riparian owner or owners of other real estate. The provisions contained in this section are hereby made an express condition of every license granted hereunder and to the exercise by the licensee of the right of eminent domain in this chapter conferred.

Code 1950, § 62-84; 1968, c. 659.

§ 62.1-96. Transfer or assignment of license.

No voluntary transfer or assignment of any license granted under this chapter shall be made to any transferee or assignee unless he be financially able to carry out the project or development, nor shall any such voluntary transfer or assignment be valid or of any effect whatsoever unless the same shall be in writing and a copy thereof be filed with, and approved by, the Commission, provided that any mortgage or trust deed, or foreclosure under any mortgage or deed of trust, or any judicial or tax sale, merger or consolidation, or any sale of the greater part of the property of the licensee in the Commonwealth, shall not be deemed a voluntary transfer within the meaning of this chapter. Any successor or assignee of the rights of the licensee, whether by voluntary transfer, judicial sale, foreclosure sale or otherwise, shall be subject to all of the obligations, liabilities and conditions incident to such license to the same extent as though such successor or assignee were the original licensee.

Code 1950, § 62-85; 1968, c. 659.

§ 62.1-97. Proceedings on violation of terms of license or of provisions of chapter or regulations.

In event of violation by the licensee of any of the terms of a license, or for the purpose of remedying by injunction, mandamus or other process any act of commission or omission by the licensee in violation of any of the provisions of this chapter, or of any lawful regulation or order promulgated in pursuance thereof, the Attorney General of this Commonwealth shall, upon request of the Commission, institute proceedings in the Circuit Court of the City of Richmond in the name of the Commonwealth at the relation of the Commission for the purpose of compelling the licensee to comply with the provisions of the license or of this chapter, or for the purpose of revoking the right of the licensee to proceed further under the license, or similarly as to a specified portion or portions of the development which is under license. The court shall have jurisdiction over all of the above-mentioned proceedings and shall be empowered to issue and execute all necessary process and to make and enforce all writs, orders and decrees to compel compliance with the lawful orders and regulations of the Commission and to compel the performance of any condition imposed under the provisions of this chapter. If a decree is entered by the court revoking the right of the licensee to proceed further with the development under license, or similarly with respect to a specified portion or portions of the development under license, the court is empowered to sell at public sale to the highest responsible bidder the property and rights of the licensee used or useful in connection with such development or such specified portion thereof,

to distribute the proceeds to the parties entitled thereto and to make and enforce such further or other orders and decrees as equity and justice may require. At such sale or sales the vendee shall succeed to the rights and privileges of the licensee with respect to such development or such specified portion thereof and shall perform all the duties of the licensee under the license and assume all such outstanding obligations and liabilities of the licensee as the court may deem equitable in the premises.

Code 1950, § 62-86; 1968, c. 659.

§ 62.1-98. Right of eminent domain of public service corporations.

In addition to any right or power of eminent domain that it may have under existing law, every public service corporation engaged in the development of waterpower in this Commonwealth for the production, sale and supply of hydroelectric power and energy to the public shall be vested with the right of eminent domain to the full extent requisite for the acquisition of all lands, property and rights necessary for the purpose of the construction, enlargement, maintenance or operation of any dam, reservoir, power station and/or other structures of any such water-power development, subject to the following provisions:

1. Such corporation may, by the exercise of such right for such purpose, acquire all necessary lands, property and rights of whatsoever nature, whether or not such lands, property or rights have been theretofore appropriated or devoted, or sought to be appropriated or devoted to public use, including but not restricted to, the lands, property and rights necessary for any storage, diversion, regulation, detention, or interference with the flow of any water and for any waterway and including also, but not restricted to, any lands, structures, property or rights owned, used or held by or for public or private, religious, charitable, educational or cemetery purposes; any dwelling houses and any public or private roads and bridges, and any other property, public or private, when necessary for such purpose; provided, however, that the right of eminent domain under this section shall not be available against existing public-carrier railroads; and provided further that, in the event of the condemnation under this chapter of any roads or bridges, the commissioners or jurors in assessing the compensation and damages therefor, shall consider the cost of relocating and constructing such roads or bridges upon other reasonable convenient locations, and the damage, if any, to persons and corporations because of relocation and construction. No such corporation shall impair the drinking water supply of any city or town or acquire any municipal electric light and power or water plant by virtue of any additional powers conferred by this chapter; provided further that the provisions of this section shall not be construed to authorize the acquisition by condemnation or otherwise of any streets or alleys or portions thereof in incorporated cities or towns.

2. When, in the operation of any dam, power station or other structure of a water-power development, any such public service corporation interferes, to an extent beyond its common-law riparian rights, with the flow of water downstream from such structure and by reason of such interference any property or riparian right, or any part thereof or interest therein, is destroyed or damaged, such corporation may exercise the right of eminent domain for the purpose of acquiring such property, right or interest so destroyed or of ascertaining and paying just compensation for any such damage.

3. In connection with the exercise of the right of eminent domain over public and private cemeteries, such corporation shall also have the right to acquire by condemnation proceedings other lands to which to remove the bodies and monuments or other structures from such public or private cemeteries. All the rights of the owners, including the Commonwealth, in and to the lands in such cemeteries shall pass to and vest in such corporation and the title to the lands acquired for the removal of such cemeteries shall vest in the former owners and such others as may have rights therein of such cemeteries so removed. However, before such corporation may flood or otherwise utilize any such cemetery, it shall remove the bodies and monuments or other structures to the lands acquired for such purpose and reinter the bodies and reset the monuments, under the direction and to the satisfaction of the court in which such condemnation proceedings are brought. If the parties in interest fail to agree as to the location and area of the additional lands to be acquired in which to reinter the bodies and on which to rest the monuments and other structures, the same shall be determined by the court.

4. For the purpose of relocating any railway, pipeline, wire line, road or bridge occupying the area on which any such water-power development or enlargement thereof is to be located, such corporation may acquire by the exercise of the right of eminent domain, any needful additional lands or other property, whether within or without the area upon such water-power development or enlargement thereof is to be located, and shall have the right for such purpose and shall convey such lands or other property or rights to the owner of such railway, pipeline, wire line, road or bridge.

5. In all cases of the exercise of such right of eminent domain just compensation shall be paid to the owners and tenants of the property taken or damaged, in the manner provided by law for all property taken or damaged. The proceedings for this purpose shall be in accordance with Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and other provisions of law. As to any part of the real estate sought to be taken for any of the purposes authorized in this chapter, such corporation may describe in its application for condemnation an estate or interest therein of a fee or less than a fee and, upon payment therefor, such estate or interest as is stated and described in such application shall vest in such corporation; but when less than a fee is taken, the commissioners or jurors in assessing damages shall take into consideration the actual damage that is done or that may be done to the fee by such taking, including the use to which the property so taken will be put by such corporation. However, nothing contained in § 62.1-97 shall deprive any owner of property of any right to receive just compensation and damages as provided by law, upon the exercise of the right of eminent domain by any licensee under this chapter.

6. Any public service corporation that shall exercise any of the additional powers of eminent domain granted in this chapter and not existing under the law in effect January 1, 1928, shall thereby be conclusively deemed to have agreed, as a condition precedent to the exercise of such powers, to be bound by all of the provisions of this chapter.

Code 1950, § 62-87; 1968, c. 659; 2003, c. 940; 2006, c. 586; 2010, c. 835.

§ 62.1-99. Water-power developments constructed or acquired prior to certain date.

Section 12 of Chapter 424 of the Acts of 1928, approved March 24, 1928, as amended by Chapter 346 of the Acts of 1932, approved March 26, 1932, codified as § 3581 (13) of Michie Code 1942 and as § 62-88 of the Code of Virginia of 1950, relating to water-power developments constructed or acquired prior to January 1, 1928, and being utilized on that date or within two years prior thereto, or upon which, between January 1, 1923, and June 17, 1928, not less than $50,000 had been expended, is continued in effect.

Code 1950, § 62-88; 1968, c. 659.

§ 62.1-100. Rules of Commission; reports; employment of experts, etc.

The Commission shall have the power to make such reasonable rules and regulations as may be necessary to administer the provisions of this chapter and to require licensees hereunder to render to it from time to time such reports as may be reasonably necessary. It shall have the power to employ expert engineers or other experts or persons to examine and report upon projects as proposed in applications for licenses, or the structures thereof, or upon plans submitted after the issuance of licenses covering additional details or succeeding stages of construction.

Code 1950, § 62-89; 1968, c. 659.

§ 62.1-101. Licenses not affected by alteration, amendment or repeal of chapter.

No alteration, amendment or repeal of this chapter shall, without the consent of the licensee, affect any license granted under the provisions of this chapter, nor shall it affect the provisions, terms and conditions of such license nor the rights of the licensee thereunder.

Code 1950, § 62-92; 1968, c. 659.

§ 62.1-102. Alteration or amendment of license.

The provisions, terms, and conditions of any license may be altered or amended at any time by mutual consent of the licensee and the Commission, to the extent such alteration or amendment is not in conflict with the then existing law of the Commonwealth.

Code 1950, § 62-93; 1968, c. 659.

§ 62.1-103. Jurisdiction of United States.

Nothing contained in this chapter shall be so construed as to interfere with the exercise of lawful jurisdiction of the government of the United States, or its duly constituted agencies, over the waters of the Commonwealth as herein defined.

Code 1950, § 62-94; 1968, c. 659.

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 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.

Code 1950, § 62-94.1; 1956, c. 632; 1958, c. 638; 1968, c. 659; 1977, c. 26.

§ 62.1-104.1. Repealed.

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.

Code 1950, § 62-94.2; 1956, c. 632; 1968, c. 659; 1976, c. 710; 1982, c. 583.

§ 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.

Code 1950, § 62-94.3; 1956, c. 632; 1958, c. 638; 1968, c. 659; 1976, c. 710; 1977, c. 26; 1982, c. 583.

§ 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.

Code 1950, § 62-94.4; 1956, c. 632; 1958, c. 638; 1968, c. 659; 1977, c. 26.

§ 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.

Code 1950, § 62-94.5; 1956, c. 632; 1968, c. 659.

§ 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.

Code 1950, § 62-94.6; 1956, c. 632; 1968, c. 659; 1977, c. 26.

§ 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.

Code 1950, § 62-94.7; 1956, c. 632; 1968, c. 659.

§ 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.

Code 1950, § 62-94.8; 1956, c. 632; 1968, c. 659; 1977, c. 26; 1996, c. 573.

§ 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.

Code 1950, § 62-94.9; 1956, c. 632; 1968, c. 659.

§ 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.

Code 1950, § 62-94.10; 1956, c. 632; 1968, c. 659.

§ 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.

Code 1950, § 62-94.11; 1956, c. 632; 1968, c. 659.

§ 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.

Code 1950, § 62-94.12; 1956, c. 632; 1968, c. 659.

Chapter 8.1 - DAM SAFETY ACT [Repealed]

§§ 62.1-115.1 through 62.1-115.10. Repealed.

Repealed by Acts 1988, c. 891.

Chapter 9 - MILLS, DAMS AND CERTAIN OTHER WORKS ON WATERCOURSES

§ 62.1-116. Application for leave to build or raise dam across or in watercourse, cut canal, etc.

A person having upon lands owned by him on a watercourse, or proposing to build on such lands, a water mill, or other machine, manufactory, or engine, useful to the public, and desiring leave to erect a dam across, or in such watercourse (whether he own the lands on either side of the watercourse at the point where such dam is to be erected or not), or to cut or enlarge a canal through lands above or below, or to raise a dam which may have been erected under an order of court, or the owner of any such water mill, machine, manufactory, or engine, located on a watercourse, having the right to the use of such watercourse for the operation of his mill, machine, manufactory, or engine, and desiring leave to construct a work on or through the lands of another for the purpose of confining the water-course within its customary channel or restoring it thereto where it has been diverted therefrom not more than three years by floods or other natural causes, may apply for such leave to the circuit court of the county wherein such mill, machine, manufactory, or engine stands, or is proposed to be built.

Code 1950, § 62-95; 1968, c. 659.

§ 62.1-117. Notice required.

Of such application ten days' previous notice shall be given in the manner prescribed in Article 2 (§ 25.1-205 et seq.) of Chapter 2 of Title 25.1 to each tenant, or the guardian, conservator or committee of the tenant, of the freehold of any lands not owned by the applicant, upon which it is desired to abut a dam, or through which it is desired to cut or enlarge a canal, or construct the work aforesaid.

Code 1950, § 62-96; 1968, c. 659; 1997, c. 801.

§ 62.1-118. Appointment of commissioners; time of meeting.

On proof of the notice, the court shall, by its order, appoint five disinterested freeholders of such county, as commissioners (any three of whom may act), whose duty it shall be to meet on a certain day to be specified in the order, at the lands on which the mill, machine, manufactory or engine stands, or is proposed to be built, or the work aforesaid is proposed to be constructed, or if they fail to meet on that day, on such subsequent day as they may designate, notice of which shall be given to the parties interested in the manner prescribed by § 62.1-117; and after they have met, they may adjourn from day to day until their business is completed.

Code 1950, § 62-97; 1968, c. 659.

§ 62.1-119. Oath of commissioners; duties; report.

The commissioners, before entering upon their duties, shall take an oath faithfully to perform the same, and thereupon shall proceed to inquire and ascertain, if the leave be granted, whether the mansion house of any person, or the outhouses, yard, garden, or orchards thereto belonging, will be overflowed or taken; whether and in what degree ordinary navigation and the passage of fish will be obstructed; whether by any, and if any, by what means such obstruction may be prevented; and whether the health of the neighbors will be annoyed by the stagnation of the waters or otherwise. They shall also circumscribe so much of the lands, not owned by the applicant, as may be necessary for the canal, dam, or work to be constructed as aforesaid, not being (beyond what is in the bed of the water-course) more than one acre for a dam, nor more than 100 feet in width for a canal, and shall ascertain

what will be a just compensation therefor. Any lands which will probably be overflowed or deprived of water, or otherwise injured by such canal or dam, or be injured by the construction of the work aforesaid, shall likewise be examined by them, and they shall ascertain what will be a just compensation to the several owners thereof, for the damage to the same respectively. All of which matters the commissioners shall set forth in a report, which they shall make out, sign, and return to the court by which they were appointed.

Code 1950, § 62-98; 1968, c. 659.

§ 62.1-120. When further notice required.

If, by such report, or otherwise, it appear that any person to whom notice has not been given, will sustain damage, notice shall be given to him, in the manner prescribed by § 62.1-117 to show cause why the applicant should not have the leave desired.

Code 1950, § 62-99; 1968, c. 659.

§ 62.1-121. When new commissioners appointed.

If good cause be shown against the report, or the commissioners report their disagreement, or fail to report within a reasonable time, the court may, in any such case as often as seems to it proper, appoint other commissioners and the matter be proceeded in as before prescribed.

Code 1950, § 62-100; 1968, c. 659.

§ 62.1-122. When court to refuse or grant leave; when granted, what terms imposed; rights of tenant on land crossed by canal.

If, on the report, or on other evidence, it appears to the court that by granting such leave the mansion house of any person other than the applicant himself, or the outhouses, yard, garden, or orchards thereto belonging, will be overflowed or taken, or that the health of the neighbor will be annoyed, the leave shall not be granted. But if it shall not so appear, the court shall then grant or refuse the leave, as may seem to it proper. If it be granted, the court shall lay the applicant under such terms and conditions as shall seem to it right. It shall, in particular, provide, that ordinary navigation and the passage of fish shall not be obstructed, nor the convenient crossing of the watercourse impeded; and where, under such leave, an existing mill, manufactory, machine, or engine is to be supplied with water by a canal, the court shall prescribe a time within which the dam, whereby water had before been supplied, shall be abated, which time shall not be more than one year from the completion of the canal. Whenever such leave is granted, the tenant of any land through which any canal may be cut, may cross it with such fencing, and bridges, and erect such water gates as he may from time to time deem necessary, not obstructing the passage of the water to the mill, manufactory, machine, or engine.

Code 1950, § 62-101; 1968, c. 659.

§ 62.1-123. Rights of applicant on payment of damages.

The applicant, to whom any such leave is granted, shall, upon paying to the several parties entitled thereto the compensation so ascertained, become seized in fee simple of the land circumscribed by the commissioners, and be authorized to proceed according to such leave.

Code 1950, § 62-102; 1968, c. 659.

§ 62.1-124. Such leave not to affect vested rights.

No person shall by means of any such leave, draw the water from any millpond of another, existing at the time of such leave, or do anything in conflict with any vested right in any waterworks erected on such watercourse.

Code 1950, § 62-103; 1968, c. 659.

§ 62.1-125. Time within which applicant must erect or rebuild works; consequence of failure.

If the applicant shall not begin his work within one year, and so far finish it within three years after such leave, as then to have his mill, manufactory, machine, or engine in good condition for use; or if such mill, manufactory, machine, or engine, 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 title to the land so circumscribed shall revert to the former owner, his heirs, or assigns, and the leave so granted shall then be in force no longer, except as provided in § 62.1-126.

Code 1950, § 62-104; 1968, c. 659.

§ 62.1-126. Forfeiture by tenant of works damaged or destroyed, and unrestored; right of remainderman or reversioner.

Where any mill, manufactory, machine, or engine in possession of, but not erected by a tenant for life or years, shall be destroyed or become unfit for use, and such tenant shall not, within the two years begin, or within the five years finish such rebuilding or repair, the person next entitled in remainder or reversion may enter and rebuild or repair the same within three years from the time of the failure of such tenant, and thereafter hold and enjoy the same, with its appurtenances, for his use and benefit.

Code 1950, § 62-105; 1968, c. 659.

§ 62.1-127. Prosecution or action for unforeseen damages.

No proceedings had under this chapter, nor any judgment thereon, shall bar any prosecution or action which could have been maintained if this chapter had not been enacted, unless the prosecution or action be for an injury actually foreseen and estimated in such proceeding or judgment.

Code 1950, § 62-106; 1968, c. 659.

Chapter 10 - VIRGINIA PORT AUTHORITY

§ 62.1-128. Authority created.

The Virginia Port Authority, hereinafter referred to as the Authority, is created as a body corporate and as a political subdivision of the Commonwealth. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth.

Code 1950, § 62-106.1; 1952, c. 61; 1954, c. 667; 1958, c. 174; 1968, c. 659; 1970, c. 171; 1981, c. 589; 1997, c. 232.

§ 62.1-129. Board of Commissioners; members and officers; Executive Director; agents and employees.

A. All powers, rights, and duties conferred by this chapter, or other provisions of law, upon the Authority shall be exercised by the Board of Commissioners of the Virginia Port Authority, hereinafter referred to as the Board or Board of Commissioners. The Board shall consist of the State Treasurer, the Chief Executive Officer of the Virginia Economic Development Partnership, the Chief Executive Officer of the Virginia International Trade Corporation, and 11 members appointed by the Governor, subject to confirmation by the General Assembly. The terms of members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981, shall be for five years. Any appointment to fill a vacancy shall be for the unexpired term. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § 2.2-2813 for each day spent on business of the Board. No member appointed by the Governor shall be eligible to serve more than two successive terms. A person appointed to fill a vacancy may be appointed to serve two additional terms. Beginning with those members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981: (i) appointments shall be made by the Governor in such a manner as to ensure the widest possible geographical representation of all parts of the Commonwealth, and (ii) no resident of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, or Virginia Beach shall be eligible for appointment or reappointment to the Board of Commissioners if his appointment or reappointment would increase or maintain the number of members of the Board of Commissioners residing in such cities above the number of five. One of the members appointed or reappointed from the cities previously mentioned in this section shall be a resident of the City of Portsmouth or the City of Chesapeake, one of the members appointed or reappointed shall be a resident of the City of Norfolk or the City of Virginia Beach, one of the members appointed or reappointed shall be a resident of the City of Newport News or the City of Hampton, one of the members appointed or reappointed shall be a resident of Greater Hampton Roads, and one of the members appointed or reappointed shall be a resident of Greater Hampton Roads, but not a resident of any of the above-mentioned cities. Additionally, one member shall be appointed from the City of Richmond or the County of Chesterfield, Hanover, or Henrico to serve as a member representing the Port of Richmond, and one member shall be appointed from the City of Winchester or the County of Clarke, Frederick, or Warren to serve as a member representing the Virginia Inland Port. Of the members appointed by the Governor, all members shall have executive level experience in any of the following industries: agriculture, distribution and warehousing, manufacturing, logistics and transportation, mining, marketing, legal, financial, or transportation infrastructure. In addition, the Governor shall appoint at least one member with maritime shipping experience from a list of at least three nominees provided by the Virginia Maritime Association, who shall not be a paid member of the Virginia Maritime Association or have any other conflict of interest with the Virginia Port Authority.

The Board shall elect from its membership a chairman and vice-chairman and may also elect from its membership, or appoint from its staff, a secretary and treasurer and prescribe their powers and duties.

The Board of Commissioners shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, who shall be known as the Executive Director and who shall serve at the pleasure of the Board. The Executive Director's compensation from the Commonwealth shall be fixed by the Board in accordance with law. This compensation shall be established at a level which will enable the Authority to attract and retain a capable Executive Director.

The Board may also appoint from the staff an assistant secretary and an assistant treasurer, who shall, in addition to other duties, discharge such functions of the secretary and treasurer, respectively, as may be directed by the Board.

B. The Board may, at its discretion and from time to time, also form a Maritime Advisory Council, consisting of representatives from the maritime industry, to provide advice and counsel to the Board of Commissioners on all matters associated with the Authority with the exception of the annual budget and personnel matters.

Code 1950, § 62-106.2; 1952, c. 61; 1954, c. 667; 1956, c. 207; 1958, c. 174; 1968, c. 659; 1970, c. 171; 1978, c. 655; 1980, c. 728; 1981, c. 589; 1983, cc. 218, 298, 338; 1987, c. 688; 2012, cc. 846, 849; 2013, cc. 762, 794; 2014, c. 424; 2016, c. 749; 2017, cc. 801, 818.

§ 62.1-129.1. Employees; employment; personnel rules; health insurance; retirement plans.

A. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The Board of Commissioners of the Authority shall develop and adopt personnel rules, policies, and procedures to give its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, religion, color, sex, sexual orientation, gender identity, or national origin.

B. The Authority shall issue a written notice to its employees regarding the Authority's status. The date upon which such written notice is issued shall be referred to herein as the "option date." Each employee may, by written request made within 180 days of the option date, elect not to become employed by the Authority. Any employee of the Virginia Port Authority who: (i) elects not to become employed by the Authority and who is not reemployed by any other department, institution, board, commission or agency of the Commonwealth; (ii) is not offered the opportunity to remain employed by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the Workforce Transition Act.

C. Any employee of the Authority who is a member of any plan providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, shall continue to be a member of such health

insurance plan under the same terms and conditions. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to: (i) establish a health insurance plan for the benefit of its employees and (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its employees under the state employees' health insurance plan, provided that such agreement requires the Authority to pay the costs of providing health insurance coverage under such plan.

D. Any retired employee of the Authority shall be eligible to receive the health insurance credit set forth in § 51.1-1400 provided the retired employee meets the eligibility criteria set forth in that section.

E. Any Authority employee who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1, shall continue to be a member of the Virginia Retirement System or other authorized retirement plan under the same terms and conditions. Alternatively, such employee may elect to become a member of the retirement program established by the Authority for the benefit of its employees pursuant to § 51.1-126.4. The following rules shall apply:

1. The Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or other such authorized retirement plan for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for any employee who elects to remain a member of the Virginia Retirement System or other such authorized retirement plan.

2. Employees who elect to become members of the alternative retirement plan established by the Authority pursuant to § 51.1-126.4 shall be given full credit for their creditable service as defined in § 51.1-124.3, and vesting and benefit accrual under the retirement plan. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan authorized pursuant to Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

3. For employees who elect to become members of the alternative retirement plan established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer to the alternative retirement plan established by the Authority, assets equal to the actuarially determined present value of the accrued basic benefits as of the transfer date. For purposes hereof, the "basic benefits" means the benefits accrued under the Virginia Retirement System or other such authorized retirement plan based on creditable service and average final compensation as defined in § 51.1-124.3. The actuarial present value shall be determined by using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or other such authorized retirement plan so that the transfer of assets to the alternative retirement plan established by the Authority will have no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan. The Authority shall reimburse the Virginia Retirement System for the

cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who transfer to an Authority retirement plan.

4. The Authority may provide that employees of the Authority who are eligible to participate in the deferred compensation plan sponsored by the Authority shall be enrolled automatically in such plan, unless such employee elects, in a manner prescribed by the Board, not to participate. The amount of the deferral under the automatic enrollment and the group of employees to which the automatic enrollment shall apply shall be set by the Board; provided however, that such employees are provided the opportunity to increase or decrease the amount of the deferral in accordance with the Internal Revenue Code of 1986, as amended.

1997, c. 232; 2000, cc. 66, 657; 2008, cc. 325, 621; 2020, c. 1137.

§ 62.1-129.2. Trust for postemployment benefits authorized; administration.

A. The Authority is hereby authorized to establish and maintain a trust or equivalent arrangement for the purpose of accumulating and investing assets to fund postemployment benefits other than pensions, as defined herein. Such trust or equivalent arrangement shall be irrevocable; the assets of such trust or similar arrangement shall be dedicated to providing benefits to retirees and their beneficiaries in accordance with the terms of the plan or programs providing postemployment benefits other than pensions; and the assets of such trust or equivalent arrangement shall be exempt from taxation and execution, attachment, garnishment or any other process against the Authority or a retiree or beneficiary. The funds of the trust or similar arrangement shall be deemed separate, and independent trust funds shall be segregated from all other funds of the Authority, and shall be invested and administered solely in the interests of the active or former employees (and their dependents or beneficiaries) entitled to postemployment benefits other than pensions covered by the Fund.

B. The Authority may make appropriations to any such trust or equivalent arrangement, and the Authority may require active and former employees covered by a postemployment benefit program to contribute to the trust or equivalent arrangement through payments or deductions from their wages, salaries, or pensions.

C. Nothing in this section shall be construed to inhibit the Authority's right to revise or discontinue its plans or programs providing such postemployment benefits other than pensions for its active and former officers and employees as it may deem necessary. If all plans or programs providing such postemployment benefits other than pensions for which the trust or equivalent arrangement is established are repealed or terminated by the Authority, then there shall be no continuing responsibility for the Authority to continue to make appropriations to such trust or equivalent arrangement, and the assets of such trust or equivalent arrangement shall be used to provide any benefits continuing to be due to active or former employees (and their dependents or beneficiaries) under such plans or programs. If there are no active or former employees (or dependents or beneficiaries) due a benefit under any plan or program providing such postemployment benefits other than pensions for which the trust or equivalent arrangement was established, then any remaining assets may revert to the Authority.

D. Postemployment benefits other than pensions shall be defined by the Authority pursuant to applicable accounting standards and law. Such benefits may include, but are not limited to, medical, prescription drug, dental, vision, hearing, life or accident insurance (not provided through a pension plan), long-term care benefits, long-term disability benefits (not covered under a pension plan) provided to individuals who have terminated their service and to the dependents of such individuals, and may be provided by purchasing insurance, by a program of self-insurance, or by a combination of both. However, postemployment benefits other than pensions shall not include defined benefit pension plans for retirees and eligible dependents of retirees, termination benefits or other pension benefits. Such postemployment benefits other than pensions may be provided to the officers and employees or to their dependents, estates, or designated beneficiaries. Any benefits arising from any postemployment benefits other than pension programs shall be clearly defined and strictly construed.

E. Notwithstanding any other provision of law, the moneys and other property comprising the trust or equivalent arrangement established hereunder and the moneys or other properties comprising the retirement program established pursuant to § 51.1-126.4 shall be invested, reinvested and managed by the Authority or the trust company or bank having powers of a trust company within or without the Commonwealth who is selected by the Board to act as a trustee for the fund, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with the same aims. Such investments shall be diversified so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. Such investments shall not be limited by Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2.

2008, cc. 597, 622.

§ 62.1-130. Powers and duties of Executive Director.

The Executive Director shall employ or retain such other agents or employees subordinate to the Executive Director as may be necessary, subject to the Board's approval. The Executive Director shall also exercise such of the powers and duties relating to ports conferred upon the Board as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The Executive Director shall also exercise and perform such other powers and duties as may be lawfully delegated to him, and such powers and duties as may be conferred or imposed upon him by law.

Code 1950, § 62-106.3; 1952, c. 61; 1954, c. 667; 1968, c. 659; 1981, c. 589.

§ 62.1-131. Office and branch offices; title to property.

The Authority shall, in the Hampton Roads Area, have and maintain its principal office, at which all of its records shall be kept, and from which its business shall be transacted. It may, if necessary, establish a branch office or offices within or without the Commonwealth or the United States. The title to all property of every kind belonging to the former Hampton Roads Port Commission or the former State Port Authority of Virginia or the former Division of Ports Department of Conservation and Development, shall be vested in the Commonwealth of Virginia for the Virginia Port Authority.

Code 1950, § 62-106.4; 1952, c. 61; 1958, c. 174; 1968, c. 659; 1970, c. 171; 1981, c. 589.

§ 62.1-132. Local authorities subordinate to Authority.

Any conflict between any authority granted to the several port cities and towns or other entities of this Commonwealth, or the exercise of that authority, and the exercise of the authority granted to the Board of Commissioners under this chapter shall be resolved in favor of the exercise of such authority by the Board of Commissioners.

Code 1950, § 62-106.6; 1952, c. 61; 1968, c. 659; 1970, c. 171; 1981, c. 589.

§ 62.1-132.1. General powers.

A. Except as provided in subsection B, the Authority is vested with the powers of a body corporate, including, without limitation, to:

1. Sue and be sued;

2. Make contracts;

3. Adopt and use a common seal, and alter such seal at its pleasure;

4. Procure insurance, participate in insurance plans, and provide self-insurance. The purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled;

5. Develop policies and procedures generally applicable to the procurement of goods, services and construction based on competitive principles; and

6. Exercise all the powers that are conferred upon industrial development authorities created pursuant to Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, except that the power to effect a change in ownership or operation of the Port of Virginia shall be subject to the provisions of § 62.1-132.19.

B. Expenditures by the Authority for capital projects are restricted to projects located on real property that is owned, leased, or operated by the Virginia Port Authority, except those expenditures (i) as provided in § 62.1-132.13 or 62.1-132.14, (ii) on grants to local government for financial assistance for port facilities as approved by the Board in policies posted on the Authority's website, or (iii) to provide support for the types of projects eligible for funding under subsection A of § 33.2-1509, subsection A of § 33.2-1600, or § 33.2-1526.4.

1981, c. 589; 1997, c. 232; 2013, cc. 762, 794; 2015, c. 609; 2020, cc. 1230, 1275.

§ 62.1-132.2. Bylaws and organization.

The Authority shall have the power to adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed. Such bylaws, rules, and regulations may provide for such committees and their functions as the Authority may deem necessary or expedient.

1981, c. 589.

§ 62.1-132.3. Stimulation of commerce.

It shall be the duty of the Authority, on behalf of the Commonwealth, to foster and stimulate the commerce of the ports of the Commonwealth and related facilities by serving as the United States Eastern Seaboard gateway for the global import and export of freight throughout the world, to promote the shipment of freight through the maritime and inland ports, to seek to secure necessary improvements of navigable tidal waters within the Commonwealth, and in general to perform any act or function that may be useful in developing, improving, or increasing the commerce, both foreign and domestic, of all maritime and inland ports of the Commonwealth and related facilities.

1981, c. 589; 2013, cc. 762, 794.

§ 62.1-132.3:1. Port Opportunity Fund.

A. There is hereby created in the state treasury a special nonreverting fund that is a subfund of the Commonwealth Port Fund, known as the Port Opportunity Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Director of the Virginia Port Authority or his designee. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Moneys in the Fund shall be used solely for the purposes enumerated in subsection C.

B. If the Authority's revenues from terminal operations during a fiscal year exceed its terminal operating expenditures for that year by at least five percent, the Authority shall request that the Treasurer transfer to the Port Opportunity Fund an amount of up to five percent of that year's revenues from terminal operations, not to exceed $2 million, unless the Secretary of Transportation determines that such a transfer is not in the long-term interest of the Authority. Such determination shall be made in writing by the Secretary of Transportation to the Executive Director of the Authority. Requests to transfer such revenues shall be made by August 30 of the ensuing fiscal year.

C. Moneys in the Fund shall be used to fund the development and implementation of a national and international marketing program and to provide incentives, as prescribed by the Board of Commissioners, for expanding the use of Virginia Port Authority facilities for the import and export of containerized and noncontainerized cargoes.

D. The Authority shall develop, and the Board of Commissioners approve, guidelines governing the use of incentives that comply with applicable Virginia laws.

2012, cc. 846, 849; 2016, c. 714.

§ 62.1-132.3:2. Port of Virginia Economic and Infrastructure Development Grant Fund and Program.

A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, and any funds transferred at the request of the Executive Director from the Port Opportunity Fund created pursuant to § 62.1-132.3:1, there is hereby created in the state

treasury a special nonreverting, permanent fund to be known as the Port of Virginia Economic and Infrastructure Development Grant Fund (the Fund), to be administered by the Virginia Port Authority. The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Director. Moneys in the Fund shall be used solely for the purpose of grants to qualified applicants to the Port of Virginia Economic and Infrastructure Development Grant Program.

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

"New, permanent full-time position" means a job of an indefinite duration, created by a qualified company as a result of operations within the Commonwealth, requiring a minimum of 35 hours of an employee's time per week for the entire normal year of the company's operations, which normal year shall consist of at least 48 weeks, or a position of indefinite duration that requires a minimum of 35 hours of an employee's time per week for the portion of the taxable year in which the employee was initially hired for the qualified company's location within the Commonwealth. "New, permanent full-time position" includes security positions as required within a foreign trade zone, established pursuant to Foreign Trade Zones Act of 1934, as amended (19 U.S.C. §§ 81a through 81u). "New, permanent full-time position" does not include seasonal or temporary positions, jobs created when a position is shifted from an existing location in the Commonwealth to the qualified company's new or expanded location, or positions in building and grounds maintenance or other positions that are ancillary to the principal activities performed by the employees at the qualified company's location within the Commonwealth.

"Qualified company" means a corporation, limited liability company, partnership, joint venture, or other business entity that (i) locates or expands a facility within the Commonwealth; (ii) creates at least 25 new, permanent full-time positions for qualified full-time employees at a facility within the Commonwealth during its first year of operation or during the year when the expansion occurs; (iii) is involved in maritime commerce or exports or imports manufactured goods through the Port of Virginia; and (iv) is engaged in one or more of the following: the distribution, freight forwarding, freight handling, goods processing, manufacturing, warehousing, crossdocking, transloading, or wholesaling of goods exported and imported through the Port of Virginia; ship building and ship repair; dredging; marine construction; or offshore energy exploration or extraction.

"Qualified full-time employee" means an employee filling a new, permanent full-time position in the qualified company's location within the Commonwealth. A "qualified full-time employee" does not include an employee (i) for whom a tax credit was previously earned pursuant to § 58.1-439 or 58.1-439.12:06 by a related party as listed in § 267(b) of the Internal Revenue Code or by a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code; (ii) who was previously employed in the same job function at an existing location in the

Commonwealth by a related party as listed in § 267(b) of the Internal Revenue Code; or (iii) whose job function was previously performed at a different location in the Commonwealth by an employee of a related party as listed in § 267(b) of the Internal Revenue Code or a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code.

C. Beginning January 1, 2014, but not later than June 30, 2025, and subject to appropriation, any qualified company that locates or expands a facility within the Commonwealth shall be eligible to apply for a one-time grant from the Fund, in an amount determined as follows:

1. One thousand dollars per new, permanent full-time position if the qualified company creates at least 25 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs;

2. Fifteen hundred dollars per new, permanent full-time position if the qualified company creates at least 50 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs;

3. Two thousand dollars per new, permanent full-time position if the qualified company creates at least 75 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs; and

4. Three thousand dollars per new, permanent full-time position if the qualified company creates at least 100 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs.

D. The maximum amount of grant allowable per qualified company in any given fiscal year is $500,000. The maximum amount of grants allowable among all qualified companies in any given fiscal year is $5 million.

E. To qualify for a grant pursuant to this section, a qualified company must apply for the grant not later than March 31 in the year immediately following the location or expansion of a facility within the Commonwealth pursuant to an application process developed by the Virginia Port Authority. Within 90 days after the filing deadline, the Executive Director shall certify to the Comptroller and the qualified company the amount of grant to which the qualified company is entitled under this section. Payment of each grant shall be made by check issued by the State Treasurer on warrant of the Comptroller within 60 days of such certification and in the order that each completed eligible application is received. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund or $5 million, such grants shall be paid in the next fiscal year in which funds are available.

F. A qualified company that has received a grant in accordance with the requirements provided in this section shall be eligible for a second grant from the Fund if it (i) locates or expands an additional facility in a separate location, as determined by the Virginia Port Authority, within the Commonwealth; (ii) creates at least 300 new, permanent full-time positions at the additional facility over and above those agreed upon in the qualified company's original memorandum of understanding with the Virginia Port

Authority; and (iii) increases cargo volumes through the Port of Virginia by at least five percent, not including any volume increase resulting from the original grant, from the additional facility. If the qualified company satisfies the requirements provided in this subsection and receives a grant consistent with the requirements of this section, then the qualified company shall enter into another separate memorandum of understanding with the Virginia Port Authority as provided in subsection G.

G. Prior to receipt of a grant, the qualified company shall enter into a memorandum of understanding with the Virginia Port Authority establishing the requirements for maintaining the number of new, permanent full-time positions for qualified employees at the qualified company's location within the Commonwealth. If the number of new, permanent full-time positions for any of the three years immediately following receipt of a grant falls below the number of new, permanent full-time positions created during the year for which the grant is claimed, the amount of the grant must be recalculated using the decreased number of new, permanent full-time positions and the qualified company shall repay the difference.

H. No qualified company shall apply for a grant nor shall one be awarded under this section to an otherwise qualified company if (i) a credit pursuant to § 58.1-439 or 58.1-439.12:06 is claimed for the same employees or for capital expenditures at the same facility by the qualified company, by a related party as listed in § 267(b) of the Internal Revenue Code, or by a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code or (ii) the qualified company was a party to a reorganization as defined in § 368(b) of the Internal Revenue Code, and any corporation involved in the reorganization as defined in § 368(a) of the Internal Revenue Code previously received a grant under this section for the same facility or operations.

I. The Virginia Port Authority, with the assistance of the Virginia Economic Development Partnership, shall develop guidelines establishing procedures and requirements for qualifying for the grant, including the affirmative determination that each applicant is a qualified company, as defined above, engaged in a port-related business. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). For the purposes of administering this grant program, the Virginia Port Authority and the Department of Taxation shall exchange information regarding whether a qualified company, a related party as listed in § 267(b) of the Internal Revenue Code, or a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code has claimed a credit pursuant to § 58.1-439 or 58.1-439.12:06 for the same employees or for capital expenditures at the same facility.

2012, Sp. Sess. I, c. 3; 2013, cc. 549, 806; 2014, c. 470; 2015, c. 246; 2019, c. 565.

§ 62.1-132.3:3. Virginia Waterway Maintenance Fund.

From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Virginia Waterway Maintenance Fund (the Fund), to be administered by the Authority. The Fund shall be established on the books of the Comptroller. Any moneys

remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Director. Moneys in the Fund shall be used solely for the purpose of awarding grants to applicants to the Virginia Waterway Maintenance Grant Program pursuant to § 62.1-132.3:4.

2018, c. 642.

§ 62.1-132.3:4. Virginia Waterway Maintenance Grant Program.

A. Once each fiscal year, the Authority shall award a grant of funds to a qualified applicant or applicants to support a dredging project or projects that have been approved by the Authority. The source of the grant funds shall be the Virginia Waterway Maintenance Fund created pursuant to § 62.1-132.3:3. Applicants shall be limited to political subdivisions and the governing bodies of Virginia localities.

B. The Authority shall develop guidelines establishing an application process, procedures for evaluating the feasibility of a proposed dredging project, and procedures for awarding grants. The guidelines and procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). The guidelines and procedures shall provide that:

1. The Authority shall evaluate each application to determine its completeness, the sufficiency of its justification for the proposed project, the status of any necessary permits, the adequacy of its project management organization, and the potential beneficial use of dredged materials for the purpose of mitigation of coastal erosion, flooding, or other purposes for the common good.

2. The Authority shall not require any level of matching contributions from the applicant.

3. No award of a grant shall support any dredging project for a solely privately owned marina or dock.

4. Prior to receipt of a grant, the applicant shall enter into a memorandum of understanding with the Authority establishing the requirements for the use of the grant funds.

C. Projects for which the Authority may award grant funding include (i) feasibility and cost evaluations, pre-project engineering studies, and project permitting and contracting costs for a waterway project conducted by the Commonwealth; (ii) the state portion of a nonfederal sponsor funding requirement for a federal project, which may include the beneficial use of dredged materials that are not covered by federal funding; (iii) the Commonwealth's maintenance of shallow-draft navigable waterway channel maintenance dredging and the construction and management of areas for the placement of dredged material; and (iv) the beneficial use, for environmental restoration and the mitigation of coastal erosion or flooding, of dredged materials from waterway projects conducted by the Commonwealth.

2018, c. 642.

§ 62.1-132.4. Rates and rate structures.

The Authority shall have power to establish a traffic bureau or other office to investigate and seek improvement in any rates, rate structures, practices, and charges affecting or tending to affect the

commerce of the ports of the Commonwealth. Notwithstanding any provision of law to the contrary, the Authority shall not disclose proprietary information and data furnished to it in confidence, including but not limited to customer contracts, agreements, or information; ship tally sheets; ship manifests; information relating to tonnages and cargoes; annual budgets; and other information furnished to it by any entity, including but not limited to any entity operating a terminal on behalf of the Virginia Port Authority.

1981, c. 589; 1997, c. 197; 2013, cc. 762, 794.

§ 62.1-132.5. Planning.

The Authority shall initiate and further plans for the development of the ports of the Commonwealth, and, to this end, shall keep informed as to the present requirements and likely future needs of those ports.

1981, c. 589.

§ 62.1-132.6. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act.

A. The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in carrying out the provisions of this chapter. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance with this chapter, provided the Authority implement, by policy or regulation adopted by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

B. The provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 shall not apply to the Authority.

C. Additionally, the provisions of §§ 2.2-1124, 2.2-1131.1, 2.2-1136, 2.2-1149, 2.2-1150, and 2.2-1153 through 2.2-1156 shall not apply to the Authority provided that (i) the Authority adopts and the Board approves policies or regulations governing the acquisition, lease, or sale of surplus and real property consistent with the provisions of the above-referenced sections; and (ii) any acquisition, lease, or sale of real property valued in excess of $20 million shall be approved by the Governor.

D. Additionally, the provisions of §§ 2.2-1117 and 53.1-47 shall not apply to the Authority.

1981, c. 589; 1997, cc. 232, 488; 2012, cc. 846, 849; 2013, cc. 762, 794; 2015, cc. 175, 383.

§ 62.1-132.7. Employment of personnel and legal counsel.

A. The Authority may appoint, employ, dismiss, and fix and pay compensation to employees, officers, agents, advisers, and consultants, including financial and technical advisers, engineers, and public accountants within and without the Commonwealth and the United States without regard to whether such employees are citizens of the United States. The Authority shall determine the duties and com-

pensation of its employees, officers, agents, advisers, and consultants without the approval of any other agency or instrumentality.

B. The authority may retain legal counsel, subject to the approval of the Attorney General, to represent the Authority in rate cases and all other hearings, controversies, or matters involving the interests of the Authority.

1981, c. 589; 1997, c. 232.

§ 62.1-132.8. Consolidation of terminal operations.

The Authority shall effect consolidation of the water terminals of the several cities within the ports of the Commonwealth. It, specifically, shall bring about the centrally directed operation of all state-owned port facilities at Hampton Roads by such means as may prove necessary or desirable, not inconsistent with state law.

1981, c. 589.

§ 62.1-132.9. Foreign trade zones.

The Authority is empowered to develop, maintain, and operate foreign trade zones under such terms and conditions as are or may be prescribed by law.

1981, c. 589.

§ 62.1-132.10. Publications of Authority.

A. The Authority may issue periodicals and carry and charge for advertising therein.

B. The Authority may compile and disseminate in a single publication all port charges, rules, and practices in effect at the several ports in the Commonwealth.

1981, c. 589.

§ 62.1-132.11. Police powers; penalties.

The Authority is empowered to adopt and enforce reasonable rules and regulations governing (i) the maximum and minimum speed limits of motor vehicles using Authority property, (ii) the kinds and sizes of vehicles which may be operated upon Authority property, (iii) materials which shall not be transported through or over Authority property, and (iv) other matters affecting the safety and security of Authority property. Such rules and regulations shall have the force and effect of law (i) after publication one time in full in a newspaper of general circulation in the city or county where the affected property is located, and (ii) when posted where the public using such property may conveniently see them. Violation of any rule or regulation which would have been a violation of law or ordinance if committed on a public street or highway shall be tried and punished as if it had been committed on a public street or highway. Any other violation of such rules and regulations shall be punishable as a Class 1 misdemeanor.

1981, c. 589.

§ 62.1-132.11:1. Prevention and suppression of fire.

The Authority may take such steps as necessary, not inconsistent with other provisions of law, to prevent and suppress fires on the waters of Hampton Roads, its tributaries and other waters in the vicinity of Hampton Roads, and on property adjacent to such waters which is accessible to a fire boat. In furtherance of this purpose, the Authority may, out of such funds as may become available, purchase, equip, maintain, use, and provide and train a crew or crews for a fire boat or fire boats.

1983, c. 303.

§ 62.1-132.11:2. Repealed.

Repealed by Acts 2011, cc. 594 and 681, cl. 2.

§ 62.1-132.12. Employment, jurisdiction, and power of special police officers.

A. The Authority may appoint and employ special police officers to enforce the laws of the Commonwealth and rules and regulations adopted pursuant to § 62.1-132.11 on property owned, leased, or operated by the Authority or any of its subsidiaries. By agreement with the locality within which the property is located, the concurrent jurisdiction and authority of such special police, upon order entered of record by the circuit court for the locality, may be extended to a specific place or places in a locality outside the geographic boundaries of Authority property. Such special police officers shall have the powers vested in police officers under §§ 15.2-1704 and 52-8. Such special police officers may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before the court of the city or county of competent jurisdiction any person violating, upon property under the control of the Authority, any rule or regulation of the Authority, any law of the Commonwealth, or any ordinance or regulation of any political subdivision of the Commonwealth.

B. The court or courts having jurisdiction for the trial of criminal offenses of the city or county wherein the offense was committed shall have jurisdiction to try persons charged with violating any such laws, ordinances, rules, or regulations. Fines and costs assessed or collected for violation of any such law, ordinance, rule, or regulation shall be paid into the Literary Fund.

1981, c. 589; 2008, cc. 324, 529; 2015, cc. 74, 253.

§ 62.1-132.12:1. Agreements with private terminal operators.

The Authority may enter into agreements with private maritime cargo terminal operators that require services comparable to services provided by the Authority to permit special police officers appointed and employed by the Authority pursuant to § 62.1-132.12 to provide and enforce safety and security on the operator's property. Such agreements shall require the private maritime cargo terminal operator to compensate the Authority for the direct and indirect costs of the services provided by the Authority.

2006, c. 220.

§ 62.1-132.13. Cooperation with federal agencies.

The Authority is empowered to cooperate with, and to act as an agent for, the United States of America or any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement, and use of harbors and seaports of the Commonwealth, and in any other matter within the purposes, duties, and powers of the Authority.

1981, c. 589.

§ 62.1-132.14. Agreement of local cooperation with Corps of Engineers.

The Authority, in addition to such other state agencies as the Governor may designate, is empowered, on behalf of and as an agent for the Commonwealth, with the approval of the Governor and after review by the Attorney General, to enter into contractual agreements, known as agreements of local cooperation, developed and tendered by the United States Army Corps of Engineers for signature by local nonfederal interests. Specifically, the Authority and other agencies designated by the Governor may contract under such agreements:

(1) To provide, free of cost to the United States, the fee simple title to lands, perpetual and/or temporary easements, rights of way and any other interest in lands for cut-off bends, the laying of pipelines, erection of dikes, sluiceways, spillways, dams, drains, deposit of dredged materials, and for other purposes, provided that the conveyance of fee simple title or perpetual easements in subaqueous beds of waterways of the Commonwealth shall require further authorization of the General Assembly;

(2) To alter existing structures on such areas;

(3) To simultaneously dredge designated areas not covered by the federal project when and where required;

(4) To construct and maintain public wharves and public roads leading thereto;

(5) To make contributions in money or property in lieu of providing disposal areas for dredged materials;

(6) To hold the United States safe and harmless against claims for damages arising out of the project or work incident thereto;

(7) To remove sewer pipes and submarine cables;

(8) To construct and maintain marine railways for the public use; and

(9) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which the Authority and other designated agencies are hereby authorized to bind themselves, subject to the lawful appropriation of funds required therefor; it being intended to authorize the Authority and other designated agencies to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned.

1981, c. 589; 1982, c. 168.

§ 62.1-132.15. Grants and loans from federal agencies.

The Authority may apply for and accept grants or loans of money or property from any federal agency for any purpose authorized in this chapter. It may expend or use such money or property in accordance with any directions, requirements, or conditions which may be imposed by the agency.

1981, c. 589.

§ 62.1-132.16. Fees and charges.

Under such terms and conditions as may be prescribed by law, the Authority may fix, alter, charge, and collect tolls, fees, rentals, and any other charges for the use of, or for services rendered by, any Authority facility. The Authority may impose, levy, and collect such other fees and charges as may assist in defraying the expenses of administration, maintenance, development, or improvement of the ports of the Commonwealth, their cargo handling facilities, and harbors.

1981, c. 589.

§ 62.1-132.17. Grants of funds and property.

Persons, counties, cities, and towns are hereby authorized to grant, and the Authority is empowered to accept, funds and property to use, within the scope of other powers and duties of the Authority, as stipulated by the grantor.

1981, c. 589.

§ 62.1-132.18. Acquisition of property.

A. The Authority is authorized to acquire, construct, maintain, equip, and operate marine terminals, port facilities, wharves, docks, ships, piers, quays, elevators, compressors, refrigeration storage plants, warehouses, and other structures necessary for the convenient use of the same in the aid of commerce. The Authority is further authorized to undertake or make arrangements for the dredging of approaches to each facility and the construction of shipping facilities and transportation facilities incident thereto. The Authority shall have the power to issue revenue bonds for such acquisitions and purposes.

B. When such facilities or equipment is acquired from any political subdivision of the Commonwealth, the Authority is authorized to give written assurances, including agreements to reconvey properties to such political subdivision, for the installment payments for any terminals, facility, or equipment thus acquired.

1981, c. 589.

§ 62.1-132.19. Acquisition and lease of property.

A. Except as provided in subsection D, the Authority is empowered to rent, lease, buy, own, acquire, construct, reconstruct, and dispose of harbors, seaports, port facilities, and such property, whether real or personal, as it may find necessary or convenient and issue revenue bonds therefor without pledging the faith and credit of the Commonwealth.

B. The Authority may lease to another such part or all of its real or personal property for such period and upon such terms and conditions as the Authority may determine.

C. The Authority shall neither expend funds nor incur any indebtedness for any improvement, repair, maintenance, or addition to any real or personal property owned by anyone other than the Authority, the Commonwealth, or a political subdivision of the Commonwealth, unless either (i) the use of such property is guaranteed to the Authority or the Commonwealth by a lease extending beyond the useful life of the improvement, repair, maintenance, addition, or new facility, or (ii) such expenditure or indebtedness is approved in writing by the Governor.

D. Notwithstanding any provision of law to the contrary, neither the Commonwealth nor the Authority shall accept any unsolicited proposal under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act (§ 56-575.1 et seq.) regarding the ownership or operation of any seaport or port facility.

1981, c. 589; 2013, cc. 762, 794.

§ 62.1-132.20. Craney Island Disposal Area.

A. No agency of the Commonwealth, including the Virginia Port Authority, shall have the authority to expand the Craney Island Disposal Area northward or westward. However, the Commonwealth and the Virginia Port Authority are authorized to expend state funds for the construction and development of Craney Island to the east for an additional marine terminal.

B. The Virginia Port Authority is hereby directed, in coordination with other state and federal agencies, including the United States Army Corps of Engineers, to locate, establish, and use ocean disposal areas for ocean-suitable dredge materials from the Hampton Roads Harbor, or some other suitable site, and to use the existing Craney Island Disposal Area for dredge material suitable or unsuitable for alternate disposal, including ocean disposal, with priority given to materials dredged from the Southern Branch of the Elizabeth River. The construction of a marine terminal on the eastern side of Craney Island Disposal Area using dredge material to extend the disposal area eastward, as defined in the U.S. Army Corps of Engineers Feasibility Study approved on October 24, 2006, and authorized by Congress in the Water Resources Development Act of 2007, is hereby authorized.

C. Prior to the disposal of any dredged material either at an ocean area or on the Craney Island Disposal Area, after the Craney Island Disposal Area has attained its capacity limit, the appropriate state agencies shall investigate and consider the cost and availability of beneficial uses of the dredged material. The appropriate state agencies shall consult with state and federal agencies to ensure the environmental acceptability of any beneficial use. When such environmentally acceptable beneficial use is available and economically feasible, the appropriate state agencies shall pursue such use.

For purposes of this section, "Craney Island Disposal Area" means that parcel of land lying and being in the body of water known as Hampton Roads Harbor, within the City of Portsmouth and adjacent to the City of Suffolk.

1991, c. 686; 1998, c. 543; 2009, c. 38; 2013, cc. 762, 794.

§§ 62.1-133, 62.1-134. Repealed.

Repealed by Acts 1981, c. 589.

§ 62.1-134.1. Expediting shipment of coal.

A. The Authority shall analyze the shipment of coal through the ports of the Commonwealth for the purpose of expediting such shipments. For this purpose, the Authority shall be authorized to collect, analyze, and require the furnishing of information, which is maintained in the ordinary course of business by the person, firm, or corporation providing such information, pertaining to the transportation of coal which has been moved to and from the ports of this Commonwealth, including:

1. From a railway company or any subsidiary thereof involved in the shipment or storage of coal -- the inland origin; the identity of any transshipper, the rail destination; the route; the car movement record, whether such movement was pursuant to permit or agreement; the date of issuance of permits; the date and time of vessel registration; the position in vessel queue at the time of registration and at the time such vessel was ordered to berth for loading; and date such vessel was loaded;

2. From any railway company, supplier, mining company, or transshipper -- the tonnage and classification of coal loaded aboard such vessel;

3. From any transshipper -- the identity of any supplier, broker, transshipper, or purchaser of coal for shipment by railway;

4. From any ship line, shipping company, ship agent, wholesaler, retailer, broker, transshipper, or operator of any coal storage facility -- the identity of any vessel loaded with coal, the date of such vessel's arrival at port, the date such vessel departed and the tonnage and classification of coal loaded aboard such vessel; and

5. From any of the parties mentioned in subdivisions 1, 2, 3, or 4 -- any other information which is relevant and necessary to such analysis of shipment of coal through the ports of the Commonwealth provided such information is maintained in the ordinary course of business of such person, firm, or corporation.

B. Notwithstanding any provisions of law to the contrary, any person, firm, corporation or agent thereof engaged in the mining, consignment, sale, transportation, loading, unloading, storage, or handling of coal for shipment through any port of this Commonwealth, whether as a mining company, railway company, ship line, shipping company, ship agent, wholesaler, retailer, broker, transshipper, operator of any coal storage facility, or facility for the loading or unloading of railroad cars or ships, or any entity otherwise engaged in an activity which directly affects the transportation of coal to or from any port of this Commonwealth, within forty-five days after receiving a written request from the Authority, shall furnish the Authority with any such information as is described in subsection A of this section as is maintained in the ordinary course of business of the party requested to provide the information. In the event of willful noncompliance with the provisions of this section by any person, firm, or corporation, the Authority may petition an appropriate circuit court for injunctive relief or, in the alternative, for recovery of a civil penalty, payable to the Authority, in an amount no less than $100 per day and no more than $1,000 per day for each day noncompliance continues. Upon a finding that the defendant's non-

compliance was willful, the court shall order compliance or payment of the civil penalty, as the case may be.

C. The aforesaid information and data shall be supplied to the Executive Director of the Authority and shall be for the exclusive use of the Executive Director and the staff of the Authority. Neither the Executive Director nor any staff member of the Authority shall disclose this information and data to any member of the Board of Commissioners of the Authority; nor to any person, firm, corporation or agent thereof engaged in the mining, consignment, sale, transportation, loading, unloading, storage, or handling of coal, whether such person, firm, corporation or agent be public or private and whether or not such person, firm, corporation, or agent be a subsidiary or unit of the Authority; nor to anyone outside the Authority.

D. In carrying out the functions heretofore described the Authority shall be deemed to be performing essential governmental functions as an agent of the Commonwealth of Virginia.

1981, c. 464.

§ 62.1-135. Repealed.

Repealed by Acts 1981, c. 589.

§ 62.1-136. Power of eminent domain.

The Authority is hereby vested with the power of eminent domain to acquire property or any interest therein, however held, but not property of the Commonwealth or its agencies, and may exercise the same for the purposes set forth in §§ 62.1-132.18 and 62.1-132.19 in the manner and to the extent set forth in, and subject to the provisions of, Chapter 2 (§ 25.1-200 et seq.) of Title 25.1; provided that the Authority shall have no power to condemn any property belonging to any other political subdivision of the Commonwealth, or to any common carrier, or public utility or other public service corporation which is being devoted to public use or service. Whether property is being devoted to public use or service in the case of a public service corporation, common carrier, or public utility, shall be decided by the State Corporation Commission in a proceeding under § 25.1-102; and in the case of a political subdivision shall be decided by the court in which the proceeding is brought.

Code 1950, § 62-106.8:1; 1962, c. 346; 1968, c. 659; 1981, c. 589; 2003, c. 940.

§ 62.1-137. Repealed.

Repealed by Acts 1981, c. 589.

§ 62.1-138. Powers of State Corporation Commission not affected.

Nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

Code 1950, § 62-106.9; 1952, c. 61; 1968, c. 659.

§ 62.1-139. Forms of accounts and records; annual report.

A. The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by governmental generally accepted

accounting principles. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by enterprises.

B. The accounts of the Authority shall be audited annually by a certified public accounting firm selected by the Auditor of Public Accounts with the assistance of the Authority through a process of competitive negotiation. The cost of such audit and review shall be borne by the Authority.

C. The General Assembly may request the Auditor of Public Accounts to conduct audits at any time.

D. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30.

E. The Authority shall submit a detailed annual operating plan and budget to the Secretary of Transportation and the Director of the Department of Planning and Budget by November 1 of each year. Notwithstanding any other provision of this chapter, the form and content of the operating plan and budget shall be determined by the Director of the Department of Planning and Budget and shall include information on salaries, expenditures, indebtedness, and other information as determined by the Director of the Department of Planning and Budget.

F. The Board of Commissioners, the General Assembly, or the Governor may at any time request that the Office of the Inspector General, created pursuant to § 2.2-308, review any area of the Authority's finances or operations.

Code 1950, § 62-106.11; 1954, c. 667; 1968, c. 659; 1984, c. 734; 1985, c. 146; 2004, c. 650; 2012, cc. 846, 849; 2013, cc. 762, 794.

§ 62.1-140. Definitions; bond resolution; form and requisites of bonds; sale and disposition of proceeds; temporary bonds.

A. As used in this section and in §§ 62.1-141 through 62.1-146, the term "port facility" means harbors, seaports and all facilities used in connection therewith and shall include all those facilities named in §§ 62.1-132.18 and 62.1-132.19.

The term "cost" as used in this chapter embraces the cost of construction, the cost of the acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the Authority for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for one year after completion of construction, engineering and legal expenses, cost of plans, specifications, surveys and estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any port facility, administrative expense, the creation of a working capital fund for placing the port facility in operation and such other expense as may be necessary or incident to the construction of such port facility, the financing of such construction and the placing of the same in operation.

The term "bonds" as used in this chapter means obligations of the Authority for the payment of borrowed money. For purposes of the limitations imposed by subsections B and C of § 62.1-140,

contingent obligations to reimburse providers for amounts drawn under credit facilities, letters of credit, lines of credit, guarantees, standby bond purchase agreements, or other credit or liquidity enhancement facilities, including any such enhancement facility obtained by the Authority for deposit into any reserve account or fund relating to any bonds, shall not constitute bonds.

For purposes of the limitations imposed by subsections B and C of § 62.1-140, the term "revenue bonds" means bonds for which only the revenues of port facilities are pledged to the payment of the principal of and interest on said bonds.

B. The Authority is hereby authorized to provide by resolution for the issuance, at one time or from time to time, of bonds of the Authority for the purpose of paying all or any part of the cost of any Authority project for the acquisition, construction, reconstruction or control of port facilities or of any portion or portions thereof, provided that the total principal amount of bonds, including refunding bonds, outstanding at any time shall not exceed $200 million, excluding from such limit any revenue bonds.

All of the bonds of one or more series of the bonds of the Authority at any time outstanding may be refunded by the Authority by the issuance of its refunding bonds in such amount as the Authority may deem necessary, but not exceeding an amount sufficient to provide for the payment of the principal of the bonds so to be refunded, together with all unpaid interest accrued and to accrue and with any redemption premium thereon and all costs and expenses incident to the authorization and issuance of such bonds as determined by the Authority. The proceeds of any such refunding bonds may, in the discretion of the Authority, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof, and may, pending such application, be placed in trust in accordance with the provisions of § 62.1-143 of this chapter to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the Authority. All refunding bonds may have all of the attributes of revenue bonds to the extent that such other provisions of this chapter relating to revenue bonds may be applicable to refunding bonds.

C. The principal of and the interest on all bonds issued by the Authority pursuant to the provisions of this chapter shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at the prevailing rate of interest at the time, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth.

All bonds shall be signed by the Executive Director of the Authority or shall bear his facsimile signature, and the official seal of the Authority or a facsimile thereof shall be impressed or imprinted

thereon and attested by the secretary of the Authority, and any coupons attached thereto shall bear the facsimile signature of the Executive Director of the Authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine will best effect the purposes of this chapter.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of acquisition, construction, reconstruction and control of port facilities or the portion thereof for which such bonds shall have been issued, or, in the case of refunding bonds, to refund such bonds including any unpaid interest accrued and to accrue and any redemption premium thereon and all costs and expenses incident to the authorization and issuance of such bonds as shall be determined by the Authority upon the issuance of such refunding bonds, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds, or, if such bonds shall have been issued for paying the cost of a portion of the project, such surplus may be applied to the payment of the cost of any remaining portion of the project.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

The Authority shall not issue any bonds, other than revenue bonds or any refunding bonds issued by the Authority pursuant to the second paragraph of subsection B of § 62.1-140, which are not specifically authorized by a bill or resolution passed by a majority vote of those elected to each house of the General Assembly. Refunding bonds may only be issued with the consent of the Governor. However, the Governor, in his sole discretion, may approve bonds which have not been authorized by

the General Assembly if such bonds are to finance capital projects that emerge between legislative sessions, provided the debt is required to stimulate commerce consistent with § 62.1-132.3 and provided that:

1. The total amount of such bonds added to the total amount of Virginia Port Authority bonds currently authorized does not exceed the limit in § 62.1-140 B;

2. Funds are available within the appropriations, if needed, without adverse effect on other projects or programs, or from unappropriated nongeneral fund revenues or balances;

3. In the Governor's opinion such action may result in a measurable benefit to the Commonwealth;

4. The authorization includes a detailed description of the project, the project need, the total project costs, the estimated operating costs, and the fund sources for the project and its operating costs;

5. The requirements of Chapter 11.1 (§ 10.1-1182 et seq.), Title 10.1, regarding environmental impact statements, will be met as a precondition for the approval of the project; and

6. The authorization of any such debt as provided for in this section shall be promptly communicated to the Chairmen of the House Appropriations and Senate Finance Committees.

Code 1950, § 62-106.12; 1954, c. 667; 1958, cc. 174, 488; 1968, c. 659; 1972, c. 423; 1981, cc. 589, 590; 1991, c. 246; 1993, c. 656.

§ 62.1-141. Trust agreement securing bonds; provisions of agreement or bond resolution; depository of proceeds or revenues; expenses.

In the discretion of the Authority any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage the port facilities or any part thereof; provided, however, the Authority may make a purchase-money agreement giving a chattel mortgage or lien on personal property or operating equipment purchased for use in its facilities. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the port facilities or the portion thereof in connection with which such bonds shall have been authorized, the rates to be charged, the custody, safeguarding and application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In

addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the port facilities or portion thereof.

Code 1950, § 62-106.13; 1954, c. 667; 1968, c. 659; 1974, c. 148.

§ 62.1-142. Charges for use of port facilities; sinking fund created from revenues for payment of bonds.

The Authority is hereby authorized to fix and revise charges for the use of the port facilities under its control and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, and to fix the terms, conditions, rents and rates of charges for such use. Such charges shall be so fixed and adjusted in respect of the aggregate of charges from the port facility or the portion or portions thereof in connection with which revenue bonds or refunding bonds shall have been issued under the provisions of this chapter as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such port facility or portion or portions and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or of any municipality, county or other political subdivision of the Commonwealth. The charges and all other revenues derived from the port facility or portion or portions in connection with which such bonds shall have been issued except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and 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 such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. In addition to all other powers granted to the Authority by this chapter, the Authority is hereby authorized to pledge to the payment of the principal of and the interest on any bonds under the provisions of this chapter any moneys

received or to be received by it under any appropriation made to it by the General Assembly, unless the appropriation is restricted by the General Assembly to specific purposes of the Authority or such pledge is prohibited by the law making such appropriations; provided, however, that nothing herein shall be construed to obligate the General Assembly to make any such appropriation.

Code 1950, § 62-106.14; 1954, c. 667; 1958, c. 174; 1968, c. 659; 1981, c. 590.

§ 62.1-143. Proceeds of bonds and revenues held in trust for certain purposes.

All moneys received pursuant to the provisions of this chapter, whether as proceeds from the sale of revenue bonds or refunding bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The Authority shall, in the resolution authorizing such bonds or in the trust agreement securing such bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received to a trustee, which shall be any trust company or bank having the powers of a trust company within or without the Commonwealth, who shall act as trustee of the funds, and hold and apply the same to the purposes of this chapter, subject to such regulations as this chapter and such resolution or trust agreement may provide. In the case of the proceeds of the sale of revenue bonds or revenues, the trustee may invest and reinvest such funds pending their need for the construction of the project in securities that are legal investments under the laws of the Commonwealth for funds held by fiduciaries. In the case of the proceeds of the sale of refunding bonds, the trustee may invest and reinvest such funds in direct obligations of, or obligations the principal of and the interest on which are guaranteed by, the United States of America. Such money and the interest, income and profits, if any, earned on such investment, shall be available for the payment of all or any part of the principal, interest, and redemption premium, if any, of the bonds being refunded. The proceeds of the sale of refunding bonds shall be so invested and applied as to assure that the principal, interest, and redemption premium, if any, on the bonds being refunded shall be paid in full on their respective maturity, redemption or interest payment dates. After the terms of the trust have been fully satisfied, and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the Authority for use by it in any lawful manner.

Code 1950, § 62-106.15; 1954, c. 667; 1968, c. 1981, c. 590.

§ 62.1-144. Remedies of bondholders and trustee.

Any holder of bonds, notes, certificates or other evidences of borrowing issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this chapter or under such trust agreement or the resolution authorizing the issuance of such bonds, notes or certificates and may enforce and compel the performance of all duties required by this chapter or by such agreement or resolution to be performed by the Authority or by any officer or agent thereof, including the fixing of charges and collection of the same.

Code 1950, § 62-106.16; 1954, c. 667; 1968, c. 659.

§ 62.1-145. Exercise of powers constitutes governmental functions; exemption from taxation.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience, and prosperity, and as the operation and maintenance of the project by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Authority under the provisions of this chapter or upon the income therefrom, including sales and use taxes on tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight, and equipment; nor shall the agents, lessees, sublessees, or users of tangible personal property owned by or leased to the Authority be required to pay any sales or use tax upon such property or the revenue derived therefrom; and the bonds, notes, certificates, or other evidences of debt issued under the provisions of this chapter, their transfer and the income therefrom including any profit made on the sale thereof, shall be exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof. The exemption from the retail sales and use tax shall apply to property acquired or used by the Authority, or by a nonstock, nonprofit corporation that operates a marine terminal or terminals solely on behalf of the Authority. Service charge payments to any city, county, or town authorized pursuant to subsection D of § 58.1-3403 shall be paid from the general fund. Service charge payments to any county, city, or town authorized pursuant to subsection B of § 58.1-3403 shall be paid by the Authority.

Code 1950, § 62-106.17; 1954, c. 667; 1968, c. 659; 1974, c. 546; 1990, c. 694; 2000, c. 737; 2005, c. 581.

§ 62.1-146. Bonds as legal investments.

Bonds issued by the Authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

Code 1950, § 62-106.18; 1954, c. 667; 1968, c. 659.

§ 62.1-147. Bonds not debt or pledge of credit of Commonwealth or political subdivision; payment of expenses.

Bonds and refunding bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or of any such political subdivision, but shall be payable solely from the

funds provided therefor from revenues. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the port facility and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this chapter.

Code 1950, § 62-106.19; 1954, c. 667; 1968, c. 659; 1981, c. 590; 1993, c. 656.

§ 62.1-147.1. Legalization of prior actions.

Any bonds issued to refund bonds or other obligations of the Authority prior to the adoption of the amendments in this chapter relating to refunding bonds which could now be taken under this chapter are hereby approved, validated and ratified by the legislature of the Commonwealth.

1981, c. 590.

§ 62.1-147.1:1. Exemption of Authority from certain technology procedures.

The provisions regulating the Virginia Information Technologies Agency (§ 2.2-2005 et seq.) shall not apply to the Authority in the exercise of any power conferred under this chapter.

2013, cc. 762, 794.

§ 62.1-147.2. Chapter liberally construed.

This chapter shall constitute full and complete authority for the doing of the acts and things herein authorized and shall be liberally construed to effect the purposes hereof.

1997, c. 232.

Chapter 11 - FEDERAL WATER RESOURCES DEVELOPMENT PROJECTS

§ 62.1-148. Resolutions and ordinances assuring local cooperation.

The governing body of any county, city or town is authorized to adopt such resolutions and/or ordinances as may be required giving it assurances to the Secretary of the Army or the Chief of Engineers of the United States Army for the fulfillment of the required items of local cooperation as expressed in acts of Congress and/or congressional documents, as conditions precedent to the accomplishment of river and harbor and flood control projects of the United States, when it shall appear, and is determined, by such local governing body that any such project will accrue to the general or special benefit of such county, city or town. In each case where the subject of such local cooperation requirements comes before a governing body a copy of its final action, whether it be favorable or unfavorable, will be sent to the Commissioner of Water Resources for the information of the Governor.

Code 1950, § 62-117.1; 1958, c. 197; 1968, c. 659.

§ 62.1-148.1. Power of cities and towns to bind themselves to perform or execute assurances regarding construction of flood walls or other flood control measures.

The cities and towns authorized to adopt resolutions and ordinances pursuant to § 62.1-148 shall have the power to irrevocably bind themselves to do any and all things necessary to perform or execute the assurances authorized to be given pursuant to § 62.1-148 regarding construction of flood walls or other flood control measures, anything in the charters of such cities or towns to the contrary notwithstanding.

1980, c. 48.

§ 62.1-149. Items of cooperation to which localities may bind themselves.

Such resolutions and ordinances may irrevocably bind such county, city or town:

(1) To provide, free of cost to the United States the fee simple title to lands, perpetual and/or temporary easements, rights-of-way and any other interest in lands for cut-off bends, the laying of pipelines, erection of dikes, sluiceways, spillways, dams, drains, deposit of dredged materials, and for other purposes;

(2) To alter existing structures on such areas;

(3) To simultaneously dredge designated areas not covered by the federal project when and where required;

(4) To construct and maintain public wharves and public roads leading thereto;

(5) To make contributions in money or property in lieu of providing disposal areas for dredged materials;

(6) To hold the United States safe and harmless against claims for damages arising out of the project or work incident thereto;

(7) To remove sewer pipes and submarine cables;

(8) To construct and maintain marine railways for the public use; and

(9) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which counties, cities and towns are herein authorized to irrevocably bind themselves; it being intended to authorize counties, cities and towns to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned.

Code 1950, § 62-117.2; 1968, c. 659.

§ 62.1-150. Acquisition of lands.

For the purpose of complying with the terms of local cooperation as specified in this chapter and as stipulated in the congressional document covering the particular project involved, any city or town may

acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation, whether such lands are within or without the corporate limits of such city or town, and any county may acquire such lands by lease, purchase, gift or condemnation.

However, the provisions of § 25.1-102, as now or hereafter in effect, shall apply to any property belonging to any corporation possessing the power of eminent domain which may be sought to be taken by condemnation hereunder.

Code 1950, § 62-117.3; 1968, c. 659; 2003, c. 940.

§ 62.1-151. Ratification of former resolutions and ordinances.

All resolutions and ordinances adopted prior to March 16, 1948, by cities, counties and towns in furtherance of local cooperation projects of the United States for river and harbor improvement and for flood control and their acts in pursuance thereof are hereby ratified and affirmed as if accomplished under the authority of this chapter.

Code 1950, § 62-117.4; 1968, c. 659.

§ 62.1-152. Liberal construction.

This chapter shall be liberally construed as in aid of projects of the United States for the improvements of rivers and harbors and for flood control and in furtherance of and not in limitation of powers now conferred by law on counties, cities and towns.

Code 1950, § 62-117.5; 1968, c. 659.

Chapter 12 - VIRGINIA BEACH EROSION COUNCIL [Repealed]

§§ 62.1-153, 62.1-154. Repealed.

Repealed by Acts 1988, c. 891.

Chapter 13 - IMPROVEMENT OF NAVIGABILITY OF STREAMS

§ 62.1-155. Cooperation by cities on navigable streams with United States.

The cities in the Commonwealth situated on navigable streams shall have the power to cooperate with the United States of America in the improvement of the navigability of such streams involving the deepening, widening and straightening the channel thereof and making provision for turning basins at terminals and mooring areas thereon.

Code 1950, § 62-117.8; 1958, c. 467; 1968, c. 659.

§ 62.1-156. Power of cities to give assurances to United States.

In order to execute the purposes and objectives declared in § 62.1-155, the cities therein defined shall have the power to give assurances to the United States of America that they will:

1. Furnish or cause to be furnished free of cost to the United States, when and as required by its duly authorized representatives, lands, easements and rights-of-way and spoil or dredged material dis-

posal areas, unrestricted in disposal elevations, for the shore disposal of material to be initially dredged and for future maintenance of such improvements within and without such cities;

2. Furnish or cause to be furnished, when and as so required, permits or easements for ingress to and egress from highways to such shore disposal areas, and permits or easements to construct pipeline trestles across oyster and clamming grounds and to lay dredge pipelines across lands adjacent to such shore disposal areas within and without such cities;

3. Subject to all applicable laws, secure such releases or permits, either or both, as may be required, holding and saving the United States, its contractors and assigns free from any and all claims for damages to public or privately owned oyster and clamming grounds resulting or attributable to the accomplishment of the initial dredging or subsequent maintenance of such improvements, either or both;

4. Secure such releases or permits, either or both, as may be so required, holding and saving the United States, its contractors and assigns free from any and all claims (a) for damages resulting from any change in the natural course of such rivers, (b) for damages resulting from blasting operations in the removal of rock or changes in ground water levels, and (c) for costs resulting from provision and operation of any bridges or ferries that may be necessary for furnishing connection between the mainland and any islands created by channel cutoffs;

5. Relocate or cause to be relocated, at no cost to the United States, when necessary, roads, bridges, waterfront structures, sewerage, water supply, storm drainage, electric power, and other utility facilities within and without such cities, except those which the United States has theretofore permitted to be constructed in, under or over such rivers;

6. Construct, maintain, expand and operate such terminal facilities within such cities which may be required to accommodate prospective foreign and domestic commerce expected to develop from the improvement of the channel of such rivers, the extent of such facilities to be mutually agreed to by the council of such cities and the duly authorized representatives of the United States; and

7. Contribute funds to the United States necessary to construct, extend and maintain mooring or berthing areas immediately adjacent to river terminals of such cities when necessary because of expansion of such terminal facilities.

Code 1950, § 62-117.9; 1958, c. 467; 1968, c. 659.

§ 62.1-157. Power of cities to bind themselves to perform or execute assurances.

The cities defined in § 62.1-155 shall have the power to irrevocably bind themselves to do any and all things necessary to perform or execute the assurances authorized to be given pursuant to § 62.1-156 anything in the charters of such cities to the contrary notwithstanding.

Code 1950, § 62-117.10; 1958, c. 467; 1968, c. 659.

§ 62.1-158. Claims for damages to oyster and clamming grounds.

Claims for damages to oyster and clamming grounds may be asserted in the courts having jurisdiction in the county or city in which such damages occur.

Code 1950, § 62-117.11; 1958, c. 467; 1968, c. 659.

Chapter 14 - FOREIGN TRADE ZONES

§ 62.1-159. "Public corporation" defined.

The term "public corporation," for the purposes of this chapter, means the Commonwealth of Virginia or any political subdivision thereof or any incorporated municipality therein or any public agency of this Commonwealth or of any political subdivision thereof or of any municipality therein, or any corporate municipal instrumentality of this Commonwealth or of this Commonwealth and one or more other states.

Code 1950, § 62-118; 1968, c. 659.

§ 62.1-160. Application by public corporation to establish and operate zone.

Any public corporation of the Commonwealth, as that term is defined in § 62.1-159, is authorized to make application, individually or jointly with any other public corporation, for the privilege of establishing, operating and maintaining a foreign-trade zone in accordance with an act of Congress approved June 18, 1934, entitled "An act to provide for the establishment, operation, and maintenance of foreign-trade zones on ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," published in volume 48 of United States statutes at large, chapter 590.

Code 1950, § 62-119; 1968, c. 659; 1970, c. 598.

§ 62.1-161. Application by private corporation.

Any private corporation hereafter organized under the laws of this Commonwealth for the purpose of establishing, operating and maintaining a foreign-trade zone in accordance with the act of Congress referred to in § 62.1-160 is likewise authorized to make application for the privilege of establishing, operating and maintaining a foreign-trade zone in accordance with the act of Congress.

Code 1950, § 62-120; 1968, c. 659.

§ 62.1-162. Authority to establish and operate zone; conditions and restrictions of act of Congress, etc.

Any public or private corporation authorized by this chapter to make application for the privilege of establishing, operating and maintaining such foreign-trade zone, whose application is granted pursuant to the terms of such act of Congress is authorized to establish a foreign-trade zone and to operate and maintain it, individually or jointly with any other public corporation, subject to the conditions and restrictions of the act of Congress, and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by the act of Congress to carry out the provisions of the act.

Code 1950, § 62-121; 1968, c. 659; 1970, c. 598.

Chapter 15 - PORT MANAGEMENT GENERALLY

§ 62.1-163. Port management.

The governing body of any county, city or town having a port may, at its pleasure, create such agencies, appoint such agents and employ such persons as may be required for the orderly and effective management of such port and its harbor; but nothing herein shall be construed to repeal or amend any prior act of the General Assembly creating or authorizing the creation of any port authority, port and industrial authority, port commission or port and industrial commission or the provisions of any municipal charter. The Circuit Court of the County of Northumberland shall appoint such an agent for the Port of Reedville. The appointing authority may prescribe for such agents and agencies such terms of office, titles, authority, duties, fees and compensation not inconsistent with law as it may deem appropriate, and may require from each person so appointed a fidelity bond in favor of the Commonwealth. All controversies arising between or among agents, agencies, authorities or commissions of two or more ports shall be referred to the Virginia Port Authority, which authority shall, under such rules and regulations not inconsistent with law as it shall promulgate, resolve every such controversy in the best interests of the Commonwealth as a whole; but any party thereto shall have a right of appeal to the Supreme Court in the same manner and under the same rules as appeals are taken from orders of the State Corporation Commission.

Code 1950, § 62-124; 1968, c. 659; 1990, c. 204.

Chapter 16 - WHARVES, DOCKS, PIERS AND BULKHEADS

§ 62.1-164. Erection and abatement of private wharves, piers and landings.

Any person owning land upon a watercourse may erect a private wharf on the same, or private pier or landing, in such watercourse opposite his land; provided, such wharf, pier or land is for non-commercial purposes and navigation be not obstructed, nor the private rights of any person be otherwise injured thereby. The circuit court of the county in which such wharf, pier or landing is, after causing ten days' notice to be given to the owner thereof, of its intention to consider the subject, if it be satisfied that such wharf, pier or landing obstructs the navigation of the watercourse, or so encroaches on any private landing as to prevent the free use thereof, may abate the same.

Code 1950, § 62-139; 1968, c. 659; 1972, c. 415.

§ 62.1-165. Erection of wharves at county landings.

Any person desiring the privilege of erecting a wharf at or on any county landing may, after giving notice of his intention by advertising such notice at some public place near the landing, and also at the front door of the courthouse of such county, on the first day of a term of the circuit court of the county, present to the court at its next term a petition for such privilege. The court may determine the same, and may, in its discretion, grant such privilege and fix such rates and charges upon such conditions and limitations as to it may seem fit. The court, at any subsequent term, may, if it think proper, revoke such privilege, or alter such conditions or limitations, or regulate the rates and charges. This section shall not be construed to authorize a circuit court of the county to grant the privilege of erecting a wharf within a city.

Code 1950, § 62-140; 1968, c. 659.

Chapter 17 - MOTORBOATS AND WATER SAFETY [Repealed]

§§ 62.1-166 through 62.1-186.24. Repealed.

Repealed by Acts 1987, c. 488.

Chapter 18 - PROTECTION OF AIDS TO NAVIGATION

§ 62.1-187. Punishment of offenses relating to buoys, beacons or day marks.

Any person or persons who shall moor any vessel or vessels of any kind or name whatsoever or any raft or any part of a raft to any buoy, beacon, or day mark, placed in the waters of Virginia by authority of the United States or shall in any manner hang on with any vessel or raft or any part of a raft to any such buoy, beacon, or day mark, or shall willfully remove, damage or destroy any such buoy, beacon or day mark, or shall cut down, remove, damage or destroy any beacon or beacons erected on land in this Commonwealth by the authority of the United States or through unavoidable accident run down, drag from its position, or in any way injure any buoy, beacon, or day mark as aforesaid and shall fail to give notice as soon as practicable of having done so to the harbor master or other legal manager of the port or to the United States Coast Guard within the district in which such buoy, beacon or day mark may be located, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed $200 or by imprisonment not to exceed three months or both; one-third of the fine in each case shall be paid to the informer and two-thirds thereof to the lighthouse board to be used in repairing the buoys and beacons.

Any person having charge of any raft passing any buoy, beacon or day mark who shall not exercise due diligence in keeping clear of it, or if unavoidably fouling it shall not exercise due diligence in clearing it without dragging from it such buoy, beacon or day mark shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not to exceed fifty dollars.

Code 1950, § 62-175; 1968, c. 659.

§ 62.1-188. Lien for cost of repairing or replacing buoy, beacon or day mark.

The cost of repairing or replacing any such buoy, beacon, or day mark which may have been misplaced, damaged, or destroyed by any vessel or raft whatsoever having been made fast to any such buoy, beacon, or day mark shall, when the same shall be legally ascertained, be a lien upon such vessel or raft and may be recovered against such vessel or raft and the owner or owners thereof in an action of debt in any court of competent jurisdiction in this Commonwealth.

Code 1950, § 62-176; 1968, c. 659.

§ 62.1-189. Anchoring on range of range lights.

It shall be unlawful for any vessel to anchor on the range of any range lights established by the United States unless such anchorage is unavoidable, and the master of any vessel so anchoring shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed fifty dollars, one-half of the fine in each case to be paid to the informer and one-half to the Commonwealth.

Code 1950, § 62-177; 1968, c. 659.

Chapter 19 - DREDGING SAND AND GRAVEL

§ 62.1-190. Dredging of sand or gravel prohibited.

It shall be unlawful for any person or corporation to dredge, dig or otherwise remove and carry away any part of any deposit of sand or gravel, or mixture of sand and gravel from any part of the fastland, or beach or bluff, abutting upon any of the rivers, streams or other waters within the jurisdiction of the Commonwealth, or from any part of the bed of such rivers, streams or other waters between high- and low-watermarks.

In case any such deposit extends uninterruptedly from low watermark out into the bed of such waters, it shall, except as hereinafter provided, be unlawful to dig and carry away any part of such extended deposit lying between such low watermark and the middle line of such waters.

Code 1950, § 62-178; 1968, c. 659.

§ 62.1-191. Violation a misdemeanor.

Any person or corporation violating the provisions of this chapter shall be guilty of a misdemeanor.

Code 1950, § 62-179; 1968, c. 659.

§ 62.1-192. Injunction and damages.

Any owner of any such fastland or beach, bluff, or bed of stream, between high- and low-watermark on which any such deposit exists or from which it extends towards the middle line of the water, as aforesaid, may, by appropriate proceedings brought by such owner, have an injunction against any person or corporation removing and carrying away or attempting to remove and carry away any such deposit or extension thereof without authority of the Commonwealth; and may, in such proceeding, or by separate action, recover against such violation of this chapter damages in treble the value of the material removed.

Code 1950, § 62-180; 1968, c. 659.

§ 62.1-193. Exemptions from chapter.

The prohibitions of this chapter shall not apply to any owner of any fastland, bluff, beach or bed of stream, upon or in front of which such deposits may lie, nor to any person or corporation acting under written permission from, or contract with such owner.

None of the provisions of this chapter shall be deemed to interfere in any manner with the provisions of any law of this Commonwealth relating to taking fish and oysters.

Code 1950, § 62-181; 1968, c. 659; 1986, c. 145.

Chapter 19.1 - CLEANING AGENTS

§ 62.1-193.1. Prohibition on certain cleaning agents.

Except as provided in § 62.1-193.2, a person may not use, sell, manufacture or distribute for use or sale in the Commonwealth any cleaning agent that contains more than zero percent phosphorus by weight expressed as elemental phosphorus except for an amount not exceeding 0.5 percent that is incidental to manufacturing. For the purposes of this chapter, "cleaning agent" means a laundry detergent, dishwashing compound, household dishwashing detergent, household cleaner, metal cleaner, industrial cleaner, phosphate compound or other substance that is intended to be used for cleaning purposes.

1987, cc. 66, 67; 2008, c. 10.

§ 62.1-193.2. Exceptions.

A. A person may use, sell, manufacture, or distribute for use or sale, a cleaning agent that contains greater than zero percent phosphorus by weight but does not exceed 8.7 percent phosphorus by weight that is:

1. A detergent used in a commercial dishwashing machine; and

2. A substance excluded from the zero percent phosphorus limitation of this chapter by regulations adopted by the Board of Agriculture and Consumer Services which are based on a finding that compliance with this chapter would:

a. Create a significant hardship on the user; or

b. Be unreasonable because of the lack of an adequate substitute cleaning agent.

B. This chapter shall not apply to a cleaning agent that is:

1. Used in dairy, beverage, or food processing equipment;

2. A product used as an industrial sanitizer, brightener, acid cleaner or metal conditioner, including phosphoric acid products or trisodium phosphate;

3. Used in hospitals, veterinary hospitals or clinics, or health care facilities or in agricultural or dairy production or in the manufacture of health care supplies;

4. Used in a commercial laundry that provides laundry services for a hospital, health care facility or veterinary hospital;

5. Used by industry for metal cleaning or conditioning;

6. Manufactured, stored, or distributed for use or sale outside of the Commonwealth;

7. Used in any laboratory, including a biological laboratory, research facility, chemical laboratory, and engineering laboratory;

8. Used for cleaning hard surfaces, including household cleansers for windows, sinks, counters, ovens, tubs, or other food preparation surfaces and plumbing fixtures; or

9. Used as a water softening chemical, antiscale chemical, or corrosion inhibitor intended for use in closed systems, such as boilers, air conditioners, cooling towers, or hot water heating systems.

1987, cc. 66, 67; 2008, c. 10.

§ 62.1-193.3. Administration, enforcement and penalty.

The Board of Agriculture and Consumer Services shall adopt rules and regulations to administer and enforce the provisions of this chapter. The Commissioner of Agriculture and Consumer Services or his authorized agent may seize any cleaning agent held for sale or distribution in violation of this chapter. The seized cleaning agents shall be considered forfeited.

Any person who knowingly sells, manufactures or distributes any cleaning agent in violation of the provisions of this chapter shall be guilty of a Class 1 misdemeanor. Any person who knowingly uses any cleaning agent in violation of the provisions of this chapter shall be guilty of a Class 4 misdemeanor.

1987, cc. 66, 67.

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 $1,000 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.

Code 1950, §§ 62-182, 62-183; 1960, c. 246; 1968, c. 659; 1970, c. 486; 1974, c. 603; 2007, c. 24.

§ 62.1-194.1. Obstructing or contaminating state waters.

A. 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 Class 1 misdemeanor. 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.

B. In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the locality wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a complaint filed by the attorney of such locality 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.

1968, c. 659; 2007, c. 26.

§ 62.1-194.1:1. Repealed.

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 laps, 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 conservation police officers 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.

Code 1950, § 62-187.1; 1964, c. 157; 1968, c. 86; 1988, c. 196.

§ 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.

Code 1950, § 62-190; 1960, c. 257; 1968, c. 169.

§ 62.1-195. Repealed.

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 § 62.1-44.15:68, 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 § 62.1-44.15:68, 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 State Water Control Board pursuant to § 62.1-44.15:72; 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, 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 30 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 90 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 (§ 2.2-4000 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 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;

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 F 1 and 4 through 9 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 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 18 months of the findings of the Director of the Department of Mines, Minerals and Energy.

1989, c. 325; 1990, c. 967; 1992, cc. 480, 887; 1993, c. 239; 1994, c. 957; 2012, cc. 785, 819; 2013, cc. 756, 793.

§ 62.1-195.2. Expired.

Expired.

§ 62.1-195.3. Hydraulic fracturing; groundwater management area.

No person shall conduct any hydraulic fracturing in any well that has been drilled through any portion of a groundwater management area declared by regulation prior to January 1, 2020, pursuant to the provisions of the Ground Water Management Act of 1992 (§ 62.1-254 et seq.). For purposes of this section, "hydraulic fracturing" means the treatment of a well by the application of hydraulic fracturing fluid, including a base fluid and any additive, under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil or natural gas.

2020, c. 626.

§ 62.1-196. Repealed.

Repealed by Acts 1987, c. 488.

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.

1984, c. 699; 1985, c. 67.

§ 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; land conservation or land preservation including land for parks and other recreational purposes; oyster restoration projects, including planting and replanting with seed oysters, oyster shells, or other material that will catch, support, and grow oysters; wastewater treatment facilities; drainage facilities; solid waste treatment, disposal and management facilities; recycling facilities; resource recovery facilities; energy conservation and energy efficiency projects; professional sports facilities; certain heavy rail transportation facilities; public safety facilities; airport facilities; the remediation of brownfields and contaminated properties, including properties contaminated by defective drywall; the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail; construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure; site acquisition and site development work for economic and community development projects; recovered gas energy facilities; the location or retention of federal facilities in the Commonwealth and the support of the transition of former federal facilities from use by the federal government to other uses; and renewable energy projects, including solar, wind, biomass, waste-to-energy, and geothermal. This need can be alleviated in part through the creation of a 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, land conservation or land preservation programs or projects, oyster restoration projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, energy conservation and energy efficiency projects, professional sports facilities, resource recovery projects, public safety facilities, airport facilities, the remediation of brownfields and contaminated properties including properties contaminated by defective drywall, the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail, site acquisition and site development work for the benefit of economic development projects, technology, construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, infrastructure for broadband services, recovered gas energy facilities, federal facilities or former federal facilities, and renewable energy projects. 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.

1984, c. 699; 1989, cc. 533, 551; 1990, c. 506; 1998, c. 399; 2000, c. 790; 2001, cc. 652, 661; 2003, c. 561; 2005, cc. 727, 769; 2007, cc. 81, 649, 663; 2008, cc. 3, 24, 238, 259, 504, 605, 613; 2009, cc. 14, 246, 311, 543, 632; 2010, cc. 42, 724, 820; 2011, c. 270.

§ 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 obligations of the Authority for the payment of money.

"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, real estate appraisals, 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. The term also includes interest and principal payments pursuant to any installment purchase agreement.

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

"Defective drywall" means the same as that term is defined in § 36-156.1.

"Federal facility" means any building or infrastructure used or to be used by the federal government, including any building or infrastructure located on lands owned by the federal government.

"Federal government" means the United States of America, or any department, agency or instrumentality, corporate or otherwise, of the United States of America.

"Former federal facility" means any federal facility formerly used by the federal government or in transition from use by the federal government to a facility all or part of which is to serve any local government.

"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, credit enhancements, or any other obligations of a local government for the payment of money.

"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 (i) 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, federal facility or former federal 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, and (ii) any federal facility located or to be located in the Commonwealth, provided that both the Board of Directors of the Authority and the governing body of the local government receiving the benefit of the loan, grant, or

credit enhancement from the Authority make a determination or finding to be embodied in a resolution or ordinance that the undertaking and financing of such facility is necessary for the location or retention of such facility and the related use by the federal government in the Commonwealth. 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 includes energy conservation measures and facility technology infrastructure as defined in § 11-34.2 and other energy objectives as defined in § 67-101. The term also means any heavy rail transportation facilities operated by a transportation district created under the Transportation District Act of 1964 (§ 33.2-1900 et seq.) that operates heavy rail freight service, including rolling stock, barge loading facilities, and any related marine or rail equipment. The term also means, without limitation, the design and construction of roads, the construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail. 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 the General Assembly as eligible for assistance from the Authority. The term also means any equipment, facilities, and technology infrastructure designed to provide broadband service. 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. The term also means any program or project for land conservation, parks, park facilities, land for recreational purposes, or land preservation, including but not limited to any program or project involving the acquisition of rights or interests in land for the conservation or preservation of such land. The term also means any dredging program or dredging project undertaken to benefit the economic and community development goals of a local government but does not include any dredging program or dredging project undertaken for or by the Virginia Port Authority. The term also means any oyster restoration project, including planting and replanting with seed oysters, oyster shells, or other material that will catch, support, and grow oysters. The term also means any program or project to perform site acquisition or site development work for the benefit of economic and

community development projects for any local government. The term also means any undertaking by a local government to build or facilitate the building of a recovered gas energy facility; and any local government renewable energy project, including solar, wind, biomass, waste-to-energy, and geothermal projects. The term also means any undertaking by a local government to facilitate the remediation of residential properties contaminated by the presence of defective drywall.

"Recovered gas energy facility" means a facility, located at or adjacent to (i) a solid waste management facility permitted by the Department of Environmental Quality or (ii) a sewerage system or sewage treatment work described in § 62.1-44.18 that is constructed and operated for the purpose of treating sewage and wastewater for discharge to state waters, which facility or work is constructed and operated for the purpose of (a) reclaiming or collecting methane or other combustible gas from the biodegradation or decomposition of solid waste, as defined in § 10.1-1400, that has been deposited in the solid waste management facility or sewerage system or sewage treatment work and (b) either using such gas to generate electric energy or upgrading the gas to pipeline quality and transmitting it off premises for sale or delivery to commercial or industrial purchasers or to a public utility or locality.

1984, c. 699; 1985, c. 67; 1986, c. 331; 1987, cc. 117, 133; 1989, cc. 533, 551; 1990, c. 506; 1998, c. 399; 1999, c. 897; 2000, c. 790; 2001, cc. 652, 661; 2005, cc. 727, 769; 2007, cc. 81, 649, 663; 2008, cc. 3, 24, 238, 259, 504, 605, 613; 2009, cc. 14, 246, 311, 543, 632; 2010, cc. 42, 724, 820; 2011, cc. 270, 616; 2018, c. 153.

§ 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.

1984, c. 699; 1985, c. 67.

§ 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 or his designee, the State Health Commissioner or his designee, 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 §

2.2-2813 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 or his designee, 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 or his designee 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.

1984, c. 699; 1989, cc. 533, 551; 1992, c. 887; 2000, cc. 38, 197; 2012, cc. 114, 242.

§ 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.

1984, c. 699; 1994, c. 684.

§ 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 unpaid sums;

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 or other reserve fund or account transferred to a trustee for such purpose from the Water Facilities Revolving Fund pursuant to § 62.1-231, from the Water Supply Revolving Fund pursuant to § 62.1-240, from the Virginia Solid Waste or Recycling Revolving Fund pursuant to § 62.1-241.9, from the Virginia Airports Revolving Fund pursuant to § 5.1-30.6, from the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to § 10.1-603.17, or from the Virginia Tobacco Region Revolving Fund pursuant to § 3.2-3117. Notwithstanding the foregoing, any such transfer from the Virginia Tobacco Region Revolving Fund may be pledged to secure only those bonds of the Authority issued to finance or refinance projects located in the tobacco-dependent communities in the Southside and Southwest regions of Virginia.

1984, c. 699; 1985, c. 67; 1986, c. 415; 1987, cc. 117, 133, 324; 1994, c. 684; 1998, c. 399; 1999, c. 897; 2003, c. 561; 2006, cc. 648, 765; 2011, c. 616; 2015, cc. 399, 433.

§ 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 $1.5 billion 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.

1984, c. 699; 1985, c. 67; 1989, cc. 533, 551; 1990, c. 506; 1994, c. 684; 1998, c. 399; 1999, c. 104; 2001, c. 574; 2009, c. 324.

§ 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.

1984, c. 699; 1994, c. 684.

§ 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.

1984, c. 699; 1985, c. 67; 1986, c. 415; 1998, c. 399.

§ 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.

1984, c. 699; 1998, c. 399.

§ 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.

1984, c. 699; 1985, c. 67; 1998, c. 399.

§ 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 unpaid sums 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.

1984, c. 699; 1986, c. 415; 1997, c. 319; 1998, c. 399; 2003, c. 561; 2011, c. 616.

§ 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 8.9A (§

8.9A-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.

1984, c. 699; 1998, c. 399.

§ 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.

1984, c. 699.

§ 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.

1984, c. 699.

§ 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.

1984, c. 699; 1998, c. 399.

§ 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.

1984, c. 699; 1998, c. 399.

§ 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.

1984, c. 699; 1998, c. 399; 2000, c. 790.

§ 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 subsection A or to make deposits into the special fund or funds provided for in subsections B and C and to pledge and apply the amounts so appropriated for such purposes.

1984, c. 699; 1985, c. 67; 1998, c. 399; 2003, c. 561.

§ 62.1-216.1. Investigation by Governor of nonpayments; withholding state funds from nonpaying locality; payment of funds withheld; receipts, reports, etc.

Whenever it appears to the Governor from an affidavit filed with him by the Authority as the purchaser, holder, or credit enhancer of local obligations (regardless of the security therefor) issued by any county, city or town that a payment has not been made on any local obligations, 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. The affidavit described in this section may be filed by a trustee to which the Authority has assigned the local obligations or the payment thereon as security for bonds of the Authority under a resolution or trust indenture or otherwise.

If it is established to the satisfaction of the Governor that such nonpayment has occurred, 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 unpaid sum is obtained. The

Governor shall, while the nonpayment 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, nonpayment on the local obligations.

The Governor shall, as soon as practicable, give notice of the nonpayment 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 nonpaying 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 nonpaying county, city or town other than from funds appropriated and payable to the nonpaying county, city or town.

1998, c. 399; 2003, c. 561; 2011, c. 616.

§ 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.

1984, c. 699.

§ 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.

1984, c. 699; 1992, cc. 378, 887.

§ 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.

1984, c. 699; 1985, c. 67; 1998, c. 399.

§ 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.

1984, c. 699.

§ 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 § 2.2-4519, (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.

1984, c. 699; 1985, c. 67; 1994, c. 684; 1996, c. 77.

§ 62.1-222. Annual reports; audit.

The Authority shall, following the close of each fiscal year, submit an annual report on or before December 1 of its activities for the preceding year to the Governor and General Assembly. 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.

1984, c. 699; 2005, c. 633.

§ 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.

1984, c. 699.

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.

1986, c. 415; 1992, c. 28; 1996, c. 20; 1999, c. 1012.

§ 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. The Authority may provide a portion of that fee to the Department of Environmental Quality to cover the Department's costs and expenses in administering the construction assistance loan program.

1986, c. 415; 1999, c. 1012; 2009, c. 351.

§ 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.

1986, c. 415; 1996, c. 77.

§ 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.

1986, c. 415.

§ 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.

1986, c. 415; 1999, c. 1012.

§ 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.

1986, c. 415; 1996, c. 20; 1999, c. 1012.

§ 62.1-229.1. Loans and grants for agricultural best management practices.

Loans or grants may be made from the Fund, in the Board's discretion, to (i) any person for the construction, renovation, improvement, or equipping of facilities or structures to implement agricultural best management practices to prevent pollution of state waters; (ii) a local government that has developed a low-interest loan program to provide loans or other incentives to facilitate the construction, renovation, improvement, or equipping of such facilities or structures; or (iii) a financial institution working with a local government to establish a program pursuant to clause (ii). The Board shall develop guidelines for the administration of such loans and grants and shall determine the terms and

conditions of any loan or grant from the Fund. For purposes of this section, facilities or structures to implement agricultural best management practices may include riparian buffers planted in trees and maintained in accordance with the terms and conditions of the loan or grant.

1999, c. 497; 2019, c. 552.

§ 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.

2001, c. 587; 2003, c. 407.

§ 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. Unless otherwise required by law, 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.

2003, c. 574; 2010, c. 644.

§ 62.1-229.4. Loans for stormwater runoff control best management practices.

Loans may be made from the Fund, in the Board's discretion, to a local government for the purpose of constructing facilities or structures or implementing other best management practices that reduce or prevent pollution of state waters caused by stormwater runoff from impervious surfaces. The Board shall develop guidelines for the administration of such loans and shall determine the terms and conditions of any loan from the Fund. Unless otherwise required by law, loans for such facilities, structures, and other best management practices may be made only when loan requests for eligible wastewater treatment facilities designed to meet the water quality standards established pursuant to § 62.1-44.15 have first been satisfied. The Board shall give priority (i) first to local governments that have adopted a stormwater control program in accordance with § 15.2-2114, (ii) second to projects designed to reduce or prevent a pollutant in a water body where the water body is in violation of water quality standards established pursuant to § 62.1-44.15, (iii) third to local governments subject to an MS4 discharge permit issued by the Board in accordance with § 62.1-44.15:20, (iv) fourth to local gov-

ernments that have adopted a stormwater management program in accordance with the stormwater management provisions of the State Water Control Law (§ 62.1-44.2 et seq.), and (v) fifth to all others.

2010, c. 644; 2013, cc. 756, 793.

§ 62.1-229.5. Loans for living shorelines.

Loans may be made from the Fund, in the Board's discretion, (i) to a local government for the purpose of establishing living shorelines, as defined in § 28.2-104.1, to protect or improve water quality and prevent the pollution of state waters or (ii) to a local government that has developed a funding program to provide low-interest loans or other incentives to businesses or individual citizens of the Commonwealth to facilitate the establishment of living shorelines to protect or improve water quality and prevent the pollution of state waters. To be eligible for loan funding, a business shall be located within a locality that is in the Rural Coastal Virginia Community Enhancement Authority as defined in § 15.2-7600. Eligible businesses include bed-and-breakfast operations, campgrounds, and restaurants, as defined in § 35.1-1, and businesses that use working waterfronts, as defined in § 15.2-2201. The Board shall develop guidelines for the administration of such loans.

2015, c. 474; 2019, c. 497.

§ 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.

1986, c. 415.

§ 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.

1992, c. 378.

§ 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.

1986, c. 415.

§ 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.

1994, c. 684.

§ 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.

1994, c. 684.

§ 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.

1986, c. 415.

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.

1987, c. 324; 1997, cc. 651, 665.

§ 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.

1987, c. 324; 1997, cc. 651, 665; 2003, c. 506.

§ 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.

1987, c. 324; 1996, c. 77.

§ 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.

1987, c. 324.

§ 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.

1987, c. 324; 1997, cc. 651, 665.

§ 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.

1987, c. 324; 1997, cc. 651, 665.

§ 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.

1987, c. 324; 1997, cc. 651, 665.

§ 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, (ii) serve two or more local governments or other entities to encourage regional cooperation, or (iii) accomplish both goals.

In order to conserve water in the Eastern Virginia Groundwater Management Area (EVGMA), created pursuant to the Ground Water Management Act of 1992 (§ 62.1-254 et seq.), and in compliance with the federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Board shall, when evaluating projects in the EVGMA, give preference to water projects that do not involve withdrawal of groundwater from the coastal plain aquifers over those water projects that withdraw groundwater from such aquifers.

1992, c. 378; 1997, cc. 651, 665; 2018, c. 183.

§ 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.

1987, c. 324.

§ 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.

1994, c. 684.

§ 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.

1994, c. 684.

§ 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.

1987, c. 324.

Chapter 23.1 - VIRGINIA SOLID WASTE OR RECYCLING REVOLVING FUND

§ 62.1-241.1. 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 Virginia Waste Management Board.

"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; 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 Solid Waste or Recycling 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.

"Project" means any solid waste management facility as defined in § 10.1-1400 or a recycling facility for materials identified in a plan adopted pursuant to § 10.1-1411 or both.

1992, c. 378.

§ 62.1-241.2. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Solid Waste or Recycling Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments, 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 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.

1992, c. 378.

§ 62.1-241.3. 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.

1992, c. 378; 1996, c. 77.

§ 62.1-241.4. 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 are considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor and to the Board.

1992, c. 378.

§ 62.1-241.5. 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, 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.

1992, c. 378.

§ 62.1-241.6. Loans to local governments.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made; the purposes of the loan; and the amount of each such loan; the interest rate thereon and the repayment terms thereof, which may vary between local governments, 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.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government 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 receiving the loan covenant perform any of the following:

1. 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

and premium, if any, and interest on the loan from the Fund to the local government; 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 in part, for future increases in rents, rates, fees, or charges;

2. 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 and premium, if any, and interest on the loan from the Fund to the local government;

3. Create and maintain a special fund or funds for the payment of the principal and premium, if any, and interest on the loan from the Fund to the local government 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, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

4. Create and maintain other special funds as required by the Authority; and

5. 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 and premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. 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;

b. 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 to the local government made in connection with such combination or any part or parts thereof;

c. The maintenance, replacement, renewal, and repair of the project; and

d. The procurement of casualty and liability insurance.

All local governments 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, but may be structured as determined by the Authority according to the needs of the contracting local governments 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 to any local government subject to guidelines adopted by the Board.

1992, c. 378.

§ 62.1-241.7. 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 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.

1992, c. 378.

§ 62.1-241.8. 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.

1992, c. 378.

§ 62.1-241.9. 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 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 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 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.

1992, c. 378.

§ 62.1-241.9:1. 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.

1994, c. 684.

§ 62.1-241.9:2. 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.

1994, c. 684.

§ 62.1-241.10. 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.

1992, c. 378.

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.

1992, c. 363.

§ 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.

1992, c. 363.

Chapter 24 - SURFACE WATER MANAGEMENT AREAS

§ 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.

1989, c. 721; 1992, c. 812.

§ 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 equit-

able 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.

1989, c. 721; 1993, c. 213.

§ 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.

1989, c. 721.

§ 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 (§ 2.2-4000 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.

1989, c. 721; 1999, c. 561.

§ 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 § 2.2-4007.01, or at the request of an affected person or on the Board's motion, a hearing shall be held under § 2.2-4009, 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.

1989, c. 721; 2007, cc. 873, 916.

§ 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.

1989, c. 721; 1999, c. 561.

§ 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.

1989, c. 721.

§ 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.

1992, c. 186.

§ 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.

1989, c. 721.

§ 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 Wildlife Resources, 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.

1989, c. 721; 2020, c. 958.

§ 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, § 2.2-4000 et seq.

1989, c. 721.

§ 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.

1989, c. 721; 1991, c. 718.

§ 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.

1989, c. 721.

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.

1992, c. 812.

§ 62.1-255. Definitions.

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

"Agricultural irrigation" means irrigation that is used to support any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Department" means the Department of Environmental Quality.

"Eastern Shore Groundwater Management Area" means the ground water management area declared by the Board encompassing the Counties of Accomack and Northampton.

"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 the 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.

"Irrigation" means the controlled application of water through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"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 the Commonwealth or any other state or country.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

1992, c. 812; 2018, c. 427; 2019, c. 755; 2020, c. 670.

§ 62.1-255.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Board or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board or the Department may be sent by regular mail.

2011, c. 566.

§ 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.

1992, c. 812.

§ 62.1-256.1. Expired.

Expired.

§ 62.1-256.2. (Expires July 1, 2025) Eastern Virginia Groundwater Management Advisory Committee established; sunset.

A. The Department of Environmental Quality (the Department) shall establish the Eastern Virginia Groundwater Management Advisory Committee (the Committee) as an advisory committee to assist the State Water Commission and the Department in the management of groundwater in the Eastern Virginia Groundwater Management Area. Members of the Committee shall be appointed by the Director of the Department and shall be composed of nonlegislative citizen members consisting of representatives of industrial and municipal water users; representatives of public and private water providers; developers and representatives from the economic development community; representatives of agricultural, conservation, and environmental organizations; state and federal agency officials; and university faculty and citizens with expertise in water resources-related issues. The Department shall convene the Committee at least four times each fiscal year. Members of the Committee shall receive no compensation for their service and shall not be entitled to reimbursement for expenses incurred in the performance of their duties.

B. During each meeting of the Committee, the Department shall (i) update the Committee on activities pertaining to groundwater management in the Eastern Virginia Groundwater Management Area and (ii) solicit members to present topics and analysis for examination at future meetings. The Committee may develop specific statutory, budgetary, and regulatory recommendations, as necessary, to enhance the effectiveness of groundwater management in the Eastern Virginia Groundwater Management Area.

C. The Department shall annually report the results of the Committee's examinations and related recommendations, and any responses from the Department, to the State Water Commission, the Governor, and the General Assembly no later than November 1 of each year.

D. The provisions of this section shall expire on July 1, 2025.

2020, c. 805.

§ 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.

1992, c. 812.

§ 62.1-258. Use of ground water in ground water management area; registration of well construction required.

It is 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. Each private well, as defined in § 32.1-176.3, constructed in a ground water management area

shall be registered by the certified water well systems provider with the Board within 30 days of the completion of the construction. Such registration shall be in a format prescribed by the Board; however, the Board and the Board of Health shall develop joint private well forms and processes. The Department of Health shall provide the Board annually with a list of private wells that have received permits during the previous year. The list shall include each well's characteristics and location. The Board shall provide the Department of Health annually with a list of wells registered during the previous year.

1992, c. 812; 2015, c. 465.

§ 62.1-258.1. Irrigation wells for nonagricultural use prohibited; exceptions.

Unless the Department of Environmental Quality has determined that the quantity or quality of the ground water in the surficial aquifer is not adequate to supply the proposed beneficial use, it shall be unlawful in a ground water management area for any person to construct a well for nonagricultural irrigation purposes except in the surficial aquifer. The provisions of this section shall not apply to wells constructed prior to the effective date of regulations adopted pursuant to subsection H of § 62.1-266.

2020, c. 670.

§ 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.

1992, c. 812.

§ 62.1-259.1. Certain withdrawals; technical evaluation required.

A. The developer of a subdivision, as defined in § 15.2-2201, located in a designated ground water management area shall apply for a technical evaluation from the Department of Environmental Quality prior to final subdivision plat approval if there will be 30 or more lots within the subdivision served by private wells, as defined in § 32.1-176.3. The application for a technical evaluation shall be on a form established by the Department and shall include a geophysical log from a geophysical borehole located within the subdivision. Such borehole may subsequently be utilized as a ground water supply for

a dwelling unit or for other appropriate purpose within the subdivision. Within 60 days of receiving a complete application for a technical evaluation, the Department shall perform a technical evaluation and provide to the developer a recommendation sufficient to serve the water needs of each dwelling unit in the subdivision that specifies the aquifer or aquifers that will minimize unmitigated impacts to ground water resources and any offsite impacts to existing ground water users. The recommendation to the developer shall be nonbinding; however, any such developer who constructs one or more private wells in the subdivision in an aquifer inconsistent with the Department's recommendation shall prepare and submit a mitigation plan to the Department, consistent with requirements for mitigation plans established by the Board, and record a mitigation plan approved by the Department with the subdivision plat prior to constructing any private wells within the subdivision. The Department is authorized to charge the developer a fee not to exceed $5,000 to perform the technical evaluation. This section shall not apply to the developer of a subdivision who constructs all of the private wells within the subdivision in the surficial aquifer.

2018, c. 427.

§ 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.

1992, c. 812; 1994, cc. 513, 592.

§ 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.

1992, c. 812.

§ 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 and subsection H of § 62.1-266, 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 clauses (i) through (iv).

1992, c. 812; 2020, c. 670.

§ 62.1-262.1. Permits for withdrawals from Eastern Shore Groundwater Management Area.

The Board shall adopt regulations to provide incentives for the withdrawal of ground water from the surficial aquifer in the Eastern Shore Groundwater Management Area rather than from the deep aquifer in such management area. Notwithstanding the provisions of subsection C of § 62.1-266, such incentives may include extended permit terms of as long as 20 years, an accelerated permit process, discounted permit fees, other subsidies, or other incentives.

2019, c. 755.

§ 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.

1992, c. 812; 1994, cc. 513, 592.

§ 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.

1992, c. 812.

§ 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.

1992, c. 812.

§ 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 15 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.

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 that, 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 locality 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.

H. The Board may adopt regulations to develop a general permit for the regulation of irrigation withdrawals from the surficial aquifer greater than 300,000 gallons in any one month. Regulations adopted pursuant to this subsection shall provide that withdrawals from the surficial aquifer may be permitted under either a general permit developed pursuant to this subsection or another ground water withdrawal permit.

I. The Board shall promulgate regulations establishing criteria for determining whether the quantity or quality of the ground water in a surficial aquifer is adequate to meet a proposed beneficial use. Such regulations shall specify the information required to be submitted to the Department by a golf course or

any other person seeking a determination from the Department that either the quantity or quality of the ground water in a surficial aquifer is not adequate to meet a proposed beneficial use. Such regulations shall require the Department, within 30 days of receipt of a complete request, to make a determination as to the adequacy of the quantity or quality of the ground water in a surficial aquifer.

1992, c. 812; 2018, c. 424; 2020, c. 670.

§ 62.1-267. Issuance of special exceptions.

A. The Board may issue a special exception to allow the withdrawal of ground water in the case of an unusual situation in which 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 15 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.

1992, c. 812; 2018, c. 424.

§ 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 § 2.2-514.

1992, c. 812.

§ 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.

1992, c. 812.

§ 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.

1992, c. 812.