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HOUSE BILL NO. 404

Offered January 13, 2000

A *BILL to amend and reenact §§ 62.1-44.17:2, 62.1-44.17:3, 62.1-44.19:4 through 62.1-44.19:6 of the Code of Virginia and to amend the Code of Virginia by adding respectively in Articles 3.1 and 4.01 of Chapter 1 of Title 62.1 sections numbered 62.1-44.17:4, 62.1-44.19:9 and 62.1-44.19:10, relating to toxics monitoring and reporting.*

Patrons—Bennett, Byron, Clement, Pollard and Ruff; Senator: Hawkins

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.17:2, 62.1-44.17:3, 62.1-44.19:4 through 62.1-44.19:6 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding respectively in Articles 3.1 and 4.01 of Chapter 1 of Title 62.1 sections numbered 62.1-44.17:4, and 62.1-44.19:9 and 62.1-19:10 as follows:

§ 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 including, but not limited to, those listed under 33 U.S.C. § 1317(a) of the Federal Water Pollution Control Act 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, which after discharge entering state waters will, on the basis of available information, cause toxicity.

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

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

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

1. Compliance data on permits that have *limits for toxics limits*;

2. The number of new permits or reissued permits that have toxic limits and the location of each permitted facility;

3. The location and number of monitoring stations and the period of time that monitoring has occurred at each location;

4. A summary of pollution prevention and pollution control activities for the reduction of toxics in state waters;

5. The sampling results from the monitoring stations for the previous year; and

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. 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.

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

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

§ 62.1-44.19:4. 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.).

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

62 "Impaired waters" means those water bodies or water body segments that are not fully supporting or
63 are partially supporting of the fishable and swimmable goals of the Clean Water Act and include those
64 waters identified in subdivision C 1 of § 62.1-44.19:5 as impaired waters.

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

67 "Toxic substance" or "toxics" means those substances listed by the USEPA Administrator pursuant to
68 § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake
69 Bay Program as of January 1, 1997, *which after entering state waters will, on the basis of available*
70 *information, cause toxicity.*

71 § 62.1-44.19:5. Water quality monitoring and reporting.

72 A. The Board shall develop the reports required by § 1313(d) (hereafter the "303(d) report") and
73 § 1315(b) (hereafter the "305(b) report") of the Clean Water Act in a manner such that the reports will:
74 (i) provide an accurate and comprehensive assessment of the quality of state surface waters; (ii) identify
75 trends in water quality for specific and easily identifiable geographically defined water segments; (iii)
76 provide a basis for developing initiatives and programs to address current and potential water quality
77 impairment; (iv) be consistent and comparable documents; and (v) contain accurate and comparable data
78 that is representative of the state as a whole. The reports shall be produced ~~biennially~~ *in accordance*
79 *with the schedule required by federal law*, but shall incorporate at least the preceding five years of data.
80 Data older than five years shall be incorporated when scientifically appropriate for trend analysis. The
81 Board shall conduct monitoring as described in subsection B and consider and incorporate factors as
82 described in subsection C into the reports. The Board may conduct additional monitoring and consider
83 and incorporate other factors or information it deems appropriate or necessary.

84 B. Monitoring shall be conducted so that it:

85 1. Establishes consistent siting and monitoring techniques to ensure data reliability, comparability of
86 data collected throughout the state, and ability to determine water quality trends within specific and
87 easily identifiable geographically defined water segments.

88 2. Expands the percentage of river and stream miles monitored so as ultimately to be representative
89 of all river and stream miles in the state according to a developed plan and schedule. Water monitoring
90 and sampling shall be expanded first to water bodies for which there is credible evidence to support an
91 indication of impairment.

92 3. Monitors, according to a plan and schedule, for all substances that are discharged to state waters
93 and that are: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997;
94 (ii) listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act; (iii) subject to
95 water quality standards; or (iv) necessary to determine water quality conditions. The Board shall develop
96 and implement the plan and schedule for the phasing in of monitoring required by this subdivision. The
97 Board shall, upon development of the plan, publish notice in the Virginia Register that the plan is
98 available for public inspection. *Contingent upon the appropriation of adequate funding for this purpose,*
99 *the monitoring schedule shall ensure that all segments identified in the Water Quality Monitoring Plan*
100 *are monitored at least once every three years.*

101 4. Provides, according to the plan in subdivision B 3, for increased use, as necessary, beyond 1996
102 levels, of sediment monitoring as well as ~~macro-invertebrate~~, benthic ~~organism~~ *macro-invertebrate*
103 *organisms* and fish tissue monitoring, and provides for specific assessments of water quality based on
104 the results of such monitoring.

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

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

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

114 C. The 303(d) report shall:

115 1. In addition to such other categories as the Board deems necessary or appropriate, identify
116 geographically defined water segments as impaired if monitoring or other evidence shows: (i) violations
117 of ambient water quality standards ~~or for aquatic life or human health standards~~; (ii) fishing restrictions
118 or advisories; (iii) shellfish consumption restrictions due to contamination; (iv) nutrient over-enrichment;
119 (v) significant declines in aquatic life biodiversity or populations; or (vi) contamination of sediment at
120 levels *that violate water quality standards or threaten aquatic life or human health.* Waters identified as
121 "naturally impaired," "fully supporting but threatened," or "evaluated (without monitoring) as impaired"

shall be set out in the report in the same format as those listed as "impaired." The Board shall develop and publish a procedure governing its process for defining and determining impaired water segments and shall provide for public comment on the procedure.

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

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

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

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

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

F. The Board shall accept and review requests from the public regarding specific segments that should be included in its water quality monitoring plan. Each request received by December 31 of the preceding year shall be reviewed when the agency develops or updates its water quality monitoring plan. Such requests shall include (i) specific information on the segment identified for monitoring, such as the geographical coordinates of the segment, and (ii) the reasons why the segment should be included in the water quality plan, including any available information that indicates the potential for impairment and whenever possible, available data from previous monitoring of fish tissue, water, sediment, or benthic macro-invertebrates. The Board shall respond in writing, either approving the request or stating the reasons why a request under this subsection has been denied, by April 30 for requests received by December 31 of the preceding year.

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

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

1. Request the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission to post notices at public access points to all toxic impaired waters *that violate human health standards*. The notice shall be prepared by the Board and shall contain (i) the basis for the impaired designation and (ii) a statement of the potential health risks *provided by the Virginia Department of Health*. The Board shall annually notify local newspapers, and persons who request notice, of any posting and its contents. The Board shall coordinate with the Virginia Marine Resources Commission and the Department of Game and Inland Fisheries to assure that adequate notice of posted waters is provided to those purchasing hunting and fishing licenses.

2. Maintain a "citizen hot-line" for citizens to obtain, either telephonically or electronically, information about the condition of waterways, including information on toxics, toxic discharges, permit violations and other water quality related issues.

3. *Make information regarding the presence of toxics in fish tissue and sediments available to the public on the Internet and through other reasonable means for at least one year after the information becomes available or until it is superseded by new information.*

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

§ 62.1-44.19:9. 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. Copies of the proposed memorandum of agreement shall be provided to the Chairmen of the House Committees on Conservation and Natural Resources and the Chesapeake and Its Tributaries, and the Senate Committee on Agriculture, Conservation and Natural Resources at least one month prior to final signature by the heads of the two agencies, but no later than December 1, 2000. Any revision of the agreement shall be submitted to the chairmen of these committees no later than one month prior to adoption by the Virginia Department of Health and the Department of Environmental Quality.

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

The Department of Environmental Quality shall develop a written policy describing the circumstances

183 *or factors that indicate the need to conduct an assessment of potential sources of toxic contamination. A*
184 *copy of the written policy shall be provided to the Chairmen of the House Committees on Conservation*
185 *and Natural Resources and Chesapeake and Its Tributaries and the Senate Committee on Agriculture,*
186 *Conservation and Natural Resources no later than one month prior to the adoption of the policy but no*
187 *later than December 1, 2000. Any revision of the policy shall be submitted to the chairmen of these*
188 *committees no later than one month prior to the adoption of the revision by the Department.*