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HOUSE BILL NO. 404**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 10, 2000)

(Patron Prior to Substitute—Delegate Bennett)

A BILL to amend and reenact §§ 10.1-2500, 62.1-44.17:2, 62.1-44.17:3, 62.1-44.19:4, 62.1-44.19:5, and 62.1-44.19:6 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 32.1-248.01 and in Article 3.1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.17:4 and in Article 4.01 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:9 and 62.1-44.19:10, relating to toxics monitoring and reporting.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-2500, 62.1-44.17:2, 62.1-44.17:3, 62.1-44.19:4, 62.1-44.19:5, and 62.1-44.19:6 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 32.1-248.01 and in Article 3.1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.17:4 and in Article 4.01 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:9 and 62.1-44.19:10 as follows:

§ 10.1-2500. Virginia Environmental Emergency Response Fund established.

A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter referred to as the Fund, to be used (i) for the purpose of emergency response to environmental pollution incidents and for the development and implementation of corrective actions for pollution incidents, other than pollution incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as described in § 62.1-44.34:11 of the State Water Control Law, (ii) *to conduct assessments of potential sources of toxic contamination in accordance with the policy developed pursuant to § 62.1-44.19:10*, and (iii) to assist small businesses for the purposes described in § 10.1-1197.3.

B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to subsection B of § 10.1-1316 and civil charges assessed pursuant to subsection C of § 10.1-1316.

2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed pursuant to subsections A and E of § 10.1-1455 and civil charges assessed pursuant to subsection F of § 10.1-1455.

3. Civil charges assessed pursuant to subdivision 8d of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.), 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.

4. Civil penalties and civil charges assessed pursuant to § 62.1-270.

5. Civil penalties assessed pursuant to subsection A of § 62.1-252 and civil charges assessed pursuant to subsection B of § 62.1-252.

6. Civil penalties assessed in conjunction with special orders by the Director pursuant to § 10.1-1186 and by the Waste Management Board pursuant to subsection G of § 10.1-1455.

§ 32.1-248.01. *Fish consumption advisories.*

The Virginia Department of Health shall develop a written policy, which shall be revised annually, that identifies the criteria and levels of concern for certain toxic substances that the Department will use in determining whether to issue a fish consumption advisory. The policy shall initially include the criteria and levels of concern for polychlorinated biphenyl, mercury, dioxin, and kepone. The Department shall issue fish consumption advisories as provided for in the policy and shall do so on a timely basis. A copy of the written policy shall be provided to the Chairmen of the House Committee on Health, Welfare and Institutions, the House Committee on Conservation and Natural Resources, the Senate Committee on Education and Health, and the Senate Committee on Agriculture, Conservation and Natural Resources no later than one month prior to adoption of the policy but no later than December 1, 2000. Any revision of the policy shall be submitted to the chairmen of these committees no later than one month prior to the adoption of the revision by the Department.

§ 62.1-44.17:2. 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~~

60 under 33 U.S.C. § 1317(a) of the Federal Water Pollution Control Act which after discharge will, on the
61 basis of available information, cause toxicity by the USEPA Administrator pursuant to § 307(a) of the
62 Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program
63 as of January 1, 1997.

64 § 62.1-44.17.3. Toxics reduction in state waters; report required.

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

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

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

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

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

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

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

82 6. The Board's plan for continued reduction of the discharge of toxics which shall include, but not be
83 limited to, additional monitoring activities, a work plan for the pollution prevention program, and any
84 pilot projects established for the use of innovative technologies to reduce the discharge of toxics;

85 7. *The identification of any segments for which the Board or the Director of the Department of*
86 *Environmental Quality has made a decision to conduct additional evaluation or monitoring. Information*
87 *regarding these segments shall include, at a minimum, the geographic location of the stream segment*
88 *within a named county or city; and*

89 8. *The identification of any segments that are designated as toxic impaired waters as defined in*
90 *§ 62.1-44.19:4 and any plans to address the impairment.*

91 § 62.1-44.17.4. Evaluation of toxics removal and remediation technology.

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

97 § 62.1-44.19:4. Definitions.

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

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

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

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

106 "Toxic impaired waters" means those ~~waters~~ *water bodies or water body segments* identified as
107 impaired due to *one or more toxic contamination* ~~contamination~~ substances in the reports prepared pursuant to
108 § 62.1-44.19:5.

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

112 § 62.1-44.19:5. Water quality monitoring and reporting.

113 A. The Board shall develop the reports required by § 1313(d) (hereafter the "303(d) report") and
114 § 1315(b) (hereafter the "305(b) report") of the Clean Water Act in a manner such that the reports will:

115 (i) provide an accurate and comprehensive assessment of the quality of state surface waters; (ii) identify
116 trends in water quality for specific and easily identifiable geographically defined water segments; (iii)
117 provide a basis for developing initiatives and programs to address current and potential water quality
118 impairment; (iv) be consistent and comparable documents; and (v) contain accurate and comparable data
119 that is representative of the state as a whole. The reports shall be produced ~~biennially~~ *in accordance*
120 *with the schedule required by federal law*, but shall incorporate at least the preceding five years of data.
121 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. Water monitoring and sampling 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 ~~macro-invertebrate~~, benthic ~~organism~~ *macro-invertebrate organisms* and fish tissue monitoring, and provides for specific assessments of water quality based on the results of such monitoring. *Contingent upon the appropriation of adequate funding for this purpose, all fish tissue and sediment monitoring for the segments identified in the water quality monitoring plan shall occur at least once every three years.*

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

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

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

C. The 303(d) report shall:

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

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

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

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

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

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

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

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

190 § 62.1-44.19:6. Citizen right-to-know provisions.

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

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

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

203 3. *Make information regarding the presence of toxics in fish tissue and sediments available to the*
204 *public on the Internet and through other reasonable means for at least five year after the information is*
205 *received by the Department of Environmental Quality. The Department of Environmental Quality shall*
206 *post on the Internet and in the Virginia Register on or about January 1 and July 1 of each year an*
207 *announcement of any new data that has been received over the past six months and shall make a copy*
208 *of the information available upon request.*

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

213 § 62.1-44.19:9. Transmission of toxics information.

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

229 § 62.1-44.19:10. Assessment of sources of toxic contamination.

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