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## SENATE BILL NO. 695

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
(Patron Prior to Substitute—Senator Stolle)

Senate Amendments in [ ] — February 15, 2000

*A BILL to amend and reenact §§ 62.1-44.3, 62.1-44.5, 62.1-44.15, 62.1-44.15:5, and 62.1-44.29 of the Code of Virginia, relating to wetlands.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 62.1-44.3, 62.1-44.5, 62.1-44.15, 62.1-44.15:5, and 62.1-44.29 of the Code of Virginia are amended and reenacted as follows:**

§ 62.1-44.3. Definitions.

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

"Board" means the State Water Control Board;

"Member" means a member of the Board;

"Certificate" means any certificate issued by the Board;

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

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5;

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

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

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

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

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

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

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

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

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

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

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

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

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

62 "Person" means an individual, corporation, partnership, association, a governmental body, a municipal  
63 corporation or any other legal entity;

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

69 "Pretreatment standards" means any standards of performance or other requirements imposed by  
70 regulation of the Board upon an industrial user of a publicly owned treatment works.

71 *"Normal agricultural activities" means those activities defined as an agricultural operation in*  
72 *§ 3.1-22.29, and any activity that is conducted as part of or in furtherance of such agricultural*  
73 *operation, but shall not include any activity for which a permit would have been required as of January*  
74 *1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.*

75 *"Normal silvicultural activities" means any silvicultural activity, as defined in § 10.1-1181.1, and any*  
76 *activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include*  
77 *any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C.*  
78 *§ 1344 or any regulations promulgated pursuant thereto.*

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

83 § 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as  
84 authorized by permit; notification required.

85 A. Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to  
86 (i) discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious  
87 substances; ~~or~~; (ii) excavate in wetlands; or (iii) otherwise alter the physical, chemical or biological  
88 properties of ~~such~~ state waters and make them detrimental to the public health, or to animal or aquatic  
89 life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other  
90 uses.

91 B. Any person required to obtain a permit or certificate pursuant to this chapter, who discharges or  
92 causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious  
93 substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state  
94 waters, in violation of the provisions of subsection A shall, upon learning of the discharge, promptly  
95 notify, but in no case later than 24 *twenty-four* hours the Board, the Director of the Department of  
96 Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for  
97 the political subdivision reasonably expected to be affected by the discharge. Written notice to the  
98 Director of the Department of Environmental Quality shall follow initial notice within the time frame  
99 specified by the federal Clean Water Act.

100 § 62.1-44.15. Powers and duties.

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

102 (1) [Repealed.]

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

105 (2a) To study and investigate methods, procedures, devices, appliances, and technologies which could  
106 assist in water conservation or water consumption reduction.

107 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or  
108 without the Commonwealth.

109 (2c) To make reports concerning, and formulate recommendations based upon, any such water  
110 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth  
111 are met.

112 (3a) To establish such standards of quality and policies for any state waters consistent with the  
113 general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies  
114 established and to take all appropriate steps to prevent quality alteration contrary to the public interest or  
115 to standards or policies thus established, except that a description of provisions of any proposed standard  
116 or policy adopted by regulation which are more restrictive than applicable federal requirements, together  
117 with the reason why the more restrictive provisions are needed, shall be provided to the standing  
118 committee of each house of the General Assembly to which matters relating to the content of the  
119 standard or policy are most properly referable. The Board shall, from time to time, but at least once  
120 every three years, hold public hearings pursuant to subsection B of § 9-6.14:7.1 but, upon the request of  
121 an affected person or upon its own motion, hold hearings pursuant to § 9-6.14:8, for the purpose of

reviewing the standards of quality, and, as appropriate, adopting, modifying, or cancelling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

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

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

(5) To issue, *revoke or amend* certificates *under prescribed conditions* for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to ~~or state waters~~; (b) the alteration otherwise of the physical, chemical or biological properties of state waters ~~under prescribed conditions and to revoke or amend such certificates~~; or (c) *excavating in wetlands*.

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

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

1. The owner has violated any regulation or order of the Board, any condition of a certificate, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a certificate, or in any other report or document required under this law or under the regulations of the Board;

3. The activity for which the certificate was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the certificate; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the certificate necessary to protect human health or the environment.

(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

183 being inspected.

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

188 (8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by  
189 § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct  
190 facilities in accordance with final approved plans and specifications to construct such facilities in  
191 accordance with final approved plans and specifications, (iii) who have violated the terms and provisions  
192 of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to  
193 comply with a directive from the Board to comply with such directive, (v) who have contravened duly  
194 adopted and promulgated water quality standards and policies to cease and desist from such  
195 contravention and to comply with such water quality standards and policies, (vi) who have violated the  
196 terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned  
197 treatment works to comply with such terms and provisions or (vii) who have contravened any applicable  
198 pretreatment standard or requirement to comply with such standard or requirement; and also to issue  
199 such orders to require any owner to comply with the provisions of this chapter and any decision of the  
200 Board.

201 (8b) Such special orders are to be issued only after a hearing with at least thirty days' notice to the  
202 affected owners, of the time, place and purpose thereof, and they shall become effective not less than  
203 fifteen days after service as provided in § 62.1-44.12; provided that if the Board finds that any such  
204 owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety  
205 or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational,  
206 commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or  
207 hearing, an emergency special order directing the owner to cease such pollution or discharge  
208 immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and  
209 place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an  
210 owner who has been issued such a special order or an emergency special order is not complying with  
211 the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based  
212 on a finding of an imminent and substantial danger, the court shall issue an injunction compelling  
213 compliance with the emergency special order pending a hearing by the Board. If an emergency special  
214 order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within  
215 forty-eight hours of the issuance of the injunction.

216 (8c) The provisions of this section notwithstanding, the Board may proceed directly under  
217 § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly  
218 promulgated hereunder.

219 (8d) With the consent of any owner who has violated or failed, neglected or refused to obey any  
220 regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board  
221 may provide, in an order issued by the Board against such person, for the payment of civil charges for  
222 past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges  
223 shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and  
224 shall not be subject to the provisions of § 2.1-127. Such civil charges shall be paid into the state  
225 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response  
226 Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding civil charges assessed for  
227 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  
228 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or  
229 issued under those articles.

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

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

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

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

244 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a

certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

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

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

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

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

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

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

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

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

*(15) To 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.*

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

A. After the effective date of regulations adopted by the Board pursuant to this section, issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

B. The Board shall issue a Virginia Water Protection Permit for an activity requiring § 401 certification if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and will protect instream beneficial uses. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia's waters. Conditions contained in a Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses.

C. *Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall be unlawful to excavate in wetlands. Individual and general*

permits shall be conditioned upon compensatory mitigation to adverse impacts to wetlands. Each general permit shall require a pre-construction application. The Board shall deny, approve or approve with conditions any application for coverage under the general permit within forty-five days of receipt of a complete pre-construction application. However, 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 utilize the United States 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 Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this subsection for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the Corps of Engineers as sufficient for the Corps' exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

The requirements of this subsection shall not apply to:

1. Activities governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2; or
2. Normal agricultural activities or normal silvicultural activities.

D. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted site, or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this subsection; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date.

CE. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit.

DF. 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.

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

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

§ 62.1-44.29. Judicial review.

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

**2. That the State Water Control Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

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