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HOUSE BILL NO. 2572

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 62.1-44.5, 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and to amend and reenact the third enactments of Chapters 1032 and 1054 of the Acts of Assembly of 2000, relating to the nontidal wetlands.

Patrons—McDonnell, Blevins, Drake, Purkey, Suit, Tata and Wardrup; Senators: Martin, Rerras, Stolle and Wagner

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:

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

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland; *or*

3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; *or*

4. ~~On and after October 1, 2001, conduct the following activities in a wetland:~~

a. ~~New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;~~

b. ~~Filling or dumping;~~

c. ~~Permanent flooding or impounding; or~~

d. ~~New activities that cause significant alteration or degradation of existing wetland acreage or functions.~~

B. Any person required to obtain a permit or certificate pursuant to this chapter, 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, in violation of the provisions of subsection A shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

§ 62.1-44.15. Powers and duties.

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

(1) [Repealed.]

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

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

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

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

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing

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58 committee of each house of the General Assembly to which matters relating to the content of the
59 standard or policy are most properly referable. The Board shall, from time to time, but at least once
60 every three years, hold public hearings pursuant to subsection B of § 9-6.14:7.1 but, upon the request of
61 an affected person or upon its own motion, hold hearings pursuant to § 9-6.14:8, for the purpose of
62 reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards.
63 Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it
64 shall give due consideration to, among other factors, the economic and social costs and benefits which
65 can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended
66 or cancelled. The Board shall also give due consideration to the public health standards issued by the
67 Virginia Department of Health with respect to issues of public health policy and protection. If the Board
68 does not follow the public health standards of the Virginia Department of Health, the Board's reason for
69 any deviation shall be made in writing and published for any and all concerned parties.

70 (3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or
71 modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 9-6.14:1 et
72 seq.).

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

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

87 (5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a
88 Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a
89 Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of
90 any required monitoring, or other project operations or permit conditions; however, the term shall not
91 exceed fifteen years. The term of a Virginia Pollution Abatement permit shall not exceed ten years,
92 except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations
93 shall be ten years. The Department of Environmental Quality shall inspect all facilities for which a
94 Virginia Pollution Abatement permit has been issued at least once every five years, except that the
95 Department shall inspect all facilities covered by the Virginia Pollution Abatement permit for confined
96 animal feeding operations annually. Department personnel performing inspections of confined animal
97 feeding operations shall be certified under the voluntary nutrient management training and certification
98 program established in § 10.1-104.2. The term of a certificate issued by the Board shall not be extended
99 by modification beyond the maximum duration and the certificate shall expire at the end of the term
100 unless an application for a new permit has been timely filed as required by the regulations of the Board
101 and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration
102 date of the previous permit.

103 (5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a
104 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided
105 by the regulations of the Board:

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

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

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

117 4. There exists a material change in the basis on which the permit was issued that requires either a
118 temporary or a permanent reduction or elimination of any discharge controlled by the certificate
119 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 being inspected.

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

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

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

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

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

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

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

181 notification.

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

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

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

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

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

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

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

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

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

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

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

233 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are
234 protective of state waters and public health as an alternative to directly discharging pollutants into waters
235 of the state. The requirements shall address various potential categories of reuse and may include
236 general permits and provide for greater flexibility and less stringent requirements commensurate with the
237 quality of the reclaimed water and its intended use. The requirements shall be developed in consultation
238 with the Department of Health and other appropriate state agencies. This authority shall not be construed
239 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

240 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's
241 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland
242 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net

resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

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

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

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

C. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia's waters. Conditions contained in a Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses.

D. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall be unlawful to excavate in a wetland. On and after October 1, 2001, except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall also be unlawful to conduct the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions; (ii) filling or dumping; (iii) permanent flooding or impounding; or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions; and may be met through wetland creation or restoration; purchase or use of mitigation bank credits pursuant to subsection E; or contributing to a fund that is approved by the Board and is dedicated to achieving no net loss of wetland acreage and functions. When utilized in conjunction with creation, restoration or mitigation bank credits, compensation may incorporate (i) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (ii) preservation of wetlands. The Board shall assess compensation implementation; inventory permitted wetland impacts; and work to prevent unpermitted impacts. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit; issue the permit with conditions; deny the permit or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding and a final decision as to the permit shall be made within ninety days of completion of the public meeting or hearing.

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

The Board shall develop general permits for:

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

304 certificate of compliance required by the U.S. Army Corps of Engineers.

305 The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical
306 Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board
307 shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of
308 Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations
309 for review and approval of the geographic area of a delineated wetland. Any such approval of a
310 delineation shall remain effective for a period of five years; however, if the Board issues a permit
311 pursuant to this subsection for an activity in the delineated wetland within the five-year period, the
312 approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army
313 Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act
314 shall be determinative of the geographic area of that delineated wetland.

315 This subsection shall not apply to activities governed under Chapter 13 (§ 28.2-100 et seq.) of Title
316 28.2 or normal agricultural activities or normal silvicultural activities. This subsection shall also not
317 apply to normal residential gardening, lawn and landscape maintenance, or other similar activities which
318 are incidental to an occupant's ongoing residential use of property and of minimal ecological impact; the
319 Board shall develop criteria governing this exemption and shall specifically identify the activities
320 meeting these criteria in its regulations.

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

323 E. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse
324 impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements
325 by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the
326 permit applicant, that has been approved and is operating in accordance with applicable federal and state
327 guidance, laws or regulations for the establishment, use and operation of mitigation banks as long as: (1)
328 the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United
329 States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted
330 site, or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this
331 subsection; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation
332 options, as defined by federal wetland regulations; and (3) the banking instrument, if approved after July
333 1, 1996, has been approved by a process that included public review and comment. When the bank is
334 not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as
335 the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates
336 to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result
337 of a Virginia Department of Transportation linear project or as the result of a locality project for a
338 locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river
339 watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project
340 within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources
341 within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay
342 watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site
343 or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the
344 Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those
345 hydrologic cataloging units, as close as possible to the impacted site. After July 1, 2002, the provisions
346 of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where
347 overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the
348 Department has made such a determination by that date. The Department of Environmental Quality is
349 authorized to serve as a signatory to agreements governing the operation of wetlands mitigation banks.
350 The Commonwealth, its officials, agencies, and employees shall not be liable for any action taken under
351 any agreement developed pursuant to such authority. State agencies are authorized to purchase credits
352 from wetland mitigation banks.

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

361 G. No Virginia Water Protection Permit shall be required for any water withdrawal in existence on
362 July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a
363 withdrawal.

364 H. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence
365 on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification

before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

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

2. That the provisions of the first enactment of this act shall become effective on January 1, 2003, if a § 404 Clean Water Act State Programmatic General Permit has not been approved by the U.S. Army Corps of Engineers on or before January 1, 2003.

3. That the third enactments of Chapter 1032 and Chapter 1054 of the Acts of Assembly of 2000 are amended and reenacted as follows:

3. That the State Water Control Board shall promptly, but no later than July 1, 20022001, seek from the U.S. Army Corps of Engineers the issuance to Virginia of a § 404 Clean Water Act State Programmatic General Permit. *Coverage under the U.S. Army Corps of Engineers Nationwide or Regional Permit that has been certified by the Board in accordance with § 404 of the Clean Water Act shall constitute coverage under the Board's general permit until such time as a State Programmatic General Permit is approved for the covered activity or impact.* The Board shall report to the House Committee on Chesapeake and Its Tributaries and the Senate Committee on Agriculture, Conservation and Natural Resources at least every six months on its progress in obtaining the State Programmatic General Permit.