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HOUSE BILL NO. 2784

Offered January 17, 2003

A BILL to amend and reenact §§ 36-139, 62.1-44.3, 62.1-44.15, 62.1-44.19:3 and 62.1-233 of the Code of Virginia; to amend the Code of Virginia by adding in Article 2 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:5.3; and in Chapter 3.1 of Title 62.1 articles numbered 13, consisting of sections numbered 62.1-44.34:29 through 62.1-44.34:43, 14, consisting of sections numbered 62.1-44.34:44 through 62.1-44.34:53, 15, consisting of sections numbered 62.1-44.34:54 through 62.1-44.34:68, and 16, consisting of sections numbered 62.1-44.34:69 through 62.1-44.34:76; and to repeal Articles 1 (§§ 32.1-163 through 32.1-166), 1.1 (§§ 32.1-166.1 through 32.1-166.10), 2 (§§ 32.1-167 through 32.1-176), and 2.1 (§§ 32.1-176.1 through 32.1-176.7) of Chapter 6 of Title 32.1 and § 32.1-248.2 of the Code of Virginia, relating to wastewater and drinking water programs.

Patrons—Griffith and Marshall, R.G.

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-139, 62.1-44.3, 62.1-44.15, 62.1-44.19:3 and 62.1-233 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 2 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:5.3, and in Chapter 3.1 of Title 62.1 articles numbered 13, consisting of sections numbered 62.1-44.34:29 through 62.1-44.34:43, 14, consisting of sections numbered 62.1-44.34:44 through 62.1-44.34:53, 15, consisting of sections numbered 62.1-44.34:54 through 62.1-44.34:68, and 16, consisting of sections numbered 62.1-44.34:69 through 62.1-44.34:76, as follows:

§ 36-139. Powers and duties of Director.

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

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12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Administering the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).

14. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.

15. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

16. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.

17. Administering, with the cooperation of the Department of ~~Health~~ *Environmental Quality*, state assistance programs for public water supply systems.

18. Advising the Board on matters relating to policies and programs of the Virginia Housing Partnership Revolving Fund.

19. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Partnership Revolving Fund and to carry out the policies and procedures established by the Board.

20. Preparing agreements and documents for loans and grants to be made from the Virginia Housing Partnership Revolving Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are to be made from such fund; directing the Virginia Housing Development Authority as to the closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing the Virginia Housing Development Authority as to the regulation and monitoring of the ownership, occupancy and operation of the housing developments and residential housing financed or assisted by such loans and grants; and providing direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in such fund.

21. Advising the Board on matters relating to policies for the low-income housing credit and administering the approval of low-income housing credits as provided in § 36-55.63.

22. Establishing and administering program guidelines for a statewide homeless intervention program.

23. Administering fifteen percent of the Low Income Home Energy Assistance Program (LIHEAP) Block Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and associated services to low-income households within the Commonwealth in accordance with applicable federal law and regulations.

24. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

25. Developing a strategy concerning the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

§ 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:

"Aesthetic standards" means water quality standards that involve those physical, biological and chemical properties of water that adversely affect the palatability and consumer acceptability of water through taste, odor, appearance or chemical reaction.

"Board" means the State Water Control Board.

"Member" means a member of the Board.

"Domestic use" means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

"Governmental entity" means the Commonwealth, a town, city, county, service authority, sanitary district or any other governmental body established under state law, including departments, divisions, boards or commissions.

"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. It also means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity or the federal government, which supplies or proposes to supply water to any person within the Commonwealth from or by means of any waterworks.

"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.

"Pure water" means water fit for human consumption and domestic use (i) that is sanitary and normally free of minerals, organic substances and toxic agents in excess of allowable limits established by the Board and (ii) that is adequate in quantity and quality for the minimum health requirements of the persons served.

"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.

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"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~~ *an administrative order issued to any person to comply with: (i) the provisions of any law administered by the Board, (ii) any condition of a permit, (iii) any regulation of the Board, or (iv) any case decision, as defined in § 2.2-4001, of the Board.*

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

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

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

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

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

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

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

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

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29, and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997,

182 under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

183 "Normal silvicultural activities" means any silvicultural activity, as defined in § 10.1-1181.1, and any
184 activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include
185 any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C.
186 § 1344 or any regulations promulgated pursuant thereto.

187 "Water supply" means water taken into a waterworks from wells, streams, springs, lakes and other
188 bodies of surface water, natural or impounded, and the tributaries thereto, and all impounded ground
189 water but does not include any water above the point of intake of such waterworks.

190 "Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public,
191 (ii) at least 15 connections or (iii) an average of 25 individuals for at least 60 days out of the year. The
192 term "waterworks" shall include all structures, equipment and appurtenances used in the storage,
193 collection, purification, treatment and distribution of pure water except the piping and fixtures inside the
194 building where such water is delivered.

195 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a
196 frequency and duration sufficient to support, and that under normal circumstances do support, a
197 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally
198 include swamps, marshes, bogs and similar areas.

199 § 62.1-44.15. Powers and duties.

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

201 (1) [Repealed.]

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

204 (2a) To study and investigate methods, procedures, devices, appliances, and technologies which could
205 assist in water conservation or water consumption reduction.

206 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or
207 without the Commonwealth.

208 (2c) To make reports concerning, and formulate recommendations based upon, any such water
209 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth
210 are met.

211 (3a) To establish such standards of quality and policies for any state waters consistent with the
212 general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies
213 established and to take all appropriate steps to prevent quality alteration contrary to the public interest or
214 to standards or policies thus established, except that a description of provisions of any proposed standard
215 or policy adopted by regulation which are more restrictive than applicable federal requirements, together
216 with the reason why the more restrictive provisions are needed, shall be provided to the standing
217 committee of each house of the General Assembly to which matters relating to the content of the
218 standard or policy are most properly referable. The Board shall, from time to time, but at least once
219 every three years, hold public hearings pursuant to subsection B of § 2.2-4007 but, upon the request of
220 an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of
221 reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards.
222 Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it
223 shall give due consideration to, among other factors, the economic and social costs and benefits which
224 can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended
225 or cancelled. The Board shall also give due consideration to the public health standards issued by the
226 Virginia Department of Health with respect to issues of public health policy and protection. If the Board
227 does not follow the public health standards of the Virginia Department of Health, the Board's reason for
228 any deviation shall be made in writing and published for any and all concerned parties.

229 (3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or
230 modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000
231 et seq.).

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

239 (5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of
240 sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of
241 the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and
242 after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause
243 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.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed fifteen 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.

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

~~(6) To make investigations and inspections, to ensure compliance with any certificates, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into a memorandum of understanding establishing a common format to consolidate and simplify inspections of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water quality and public health and at the same time avoid any unnecessary administrative burden on those being inspected.~~

(7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to 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

305 comply with a directive from the Board to comply with such directive, (v) who have contravened duly
306 adopted and promulgated water quality standards and policies to cease and desist from such
307 contravention and to comply with such water quality standards and policies, (vi) who have violated the
308 terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned
309 treatment works to comply with such terms and provisions or (vii) who have contravened any applicable
310 pretreatment standard or requirement to comply with such standard or requirement; and also to issue
311 such orders to require any owner to comply with the provisions of this chapter and any decision of the
312 Board.

313 (8b) Such special orders are to be issued only after a hearing with at least thirty days' notice to the
314 affected owners, of the time, place and purpose thereof, and they shall become effective not less than
315 fifteen days after service as provided in § 62.1-44.12; provided that if the Board finds that any such
316 owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety
317 or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational,
318 commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or
319 hearing, an emergency special order directing the owner to cease such pollution or discharge
320 immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and
321 place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an
322 owner who has been issued such a special order or an emergency special order is not complying with
323 the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based
324 on a finding of an imminent and substantial danger, the court shall issue an injunction compelling
325 compliance with the emergency special order pending a hearing by the Board. If an emergency special
326 order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within
327 forty-eight hours of the issuance of the injunction.

328 (8c) The provisions of this section notwithstanding, the Board may proceed directly under
329 § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly
330 promulgated hereunder.

331 (8d) With the consent of any owner who has violated or failed, neglected or refused to obey any
332 regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board
333 may provide, in an order issued by the Board against such person, for the payment of civil charges for
334 past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges
335 shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and
336 shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state
337 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response
338 Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding civil charges assessed for
339 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,
340 or a regulation, administrative or judicial order, or term or condition of approval relating to or issued
341 under those articles.

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

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

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

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

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

365 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any
366 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 promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into waters of the state. The requirements shall address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use. The requirements shall be developed in consultation with the Department of Health and other appropriate state agencies. This authority shall not be construed as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

(16) To establish and implement policies and programs to protect and enhance the Commonwealth's wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

(17) To issue, revoke or amend permits under prescribed conditions for waterworks and to have general supervision and control over all water supplies and waterworks in the Commonwealth insofar as the bacteriological, chemical, radiological, and physical quality of waters furnished for drinking or domestic use may affect the public health and welfare and may require that all water supplies be pure water. In exercising such supervision and control, the Board shall recognize the relationship between an owner's financial, technical, managerial, and operational capabilities and his capacity to comply with state and federal drinking water standards.

§ 62.1-44.15:5.3. Use of rainwater and reuse of gray water.

A. The Department shall develop by January 1, 1999, guidelines regarding the use of gray water and rainwater. The guidelines shall describe the conditions under which gray water and rainwater may appropriately be used and for what purposes. The guidelines shall include categories of used water, such as types of used household water and used water from businesses, which are appropriate for reuse. The guidelines shall include a definition of gray water that does not include used toilet water.

B. The Department shall promote the use of rainwater and reuse of gray water as means to reduce fresh water consumption, ease demands on public treatment works and water supply systems, and promote conservation.

§ 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit; ordinances; fees.

A. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit issued by the Board.

B. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the Board or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.

C. *The Board, with the assistance of the Departments of Health and Conservation and Recreation, shall promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing or distribution is properly treated or stabilized, (ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect the environment and public health, and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, will be prevented.*

D. Regulations promulgated by the Board, with the assistance of the Departments of Health and Conservation and Recreation pursuant to subsection C, shall include:

1. Requirements and procedures for the issuance and amendment of permits as required by this section;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;

5. Required procedures for land application, marketing and distribution of sewage sludge;

6. Requirements for sampling, analysis, recordkeeping and reporting in connection with land application, marketing and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with this section; and

8. Conditions where a nutrient management plan approved by the Department of Conservation and Recreation may be required.

E. *The Board may adopt regulations prescribing a reasonable fee not to exceed \$2,500 to be charged for the direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage sludge pursuant to this section.*

F. *The fees required by this section shall be transmitted to the Comptroller to be deposited into the State Water Control Board Permit Program Fund established pursuant to § 62.1-44.15:7. The income and principal of the fund shall be used only and exclusively for the direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage sludge. The State Treasurer shall be the custodian of the moneys deposited in the fund. No part of the fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.*

G. Any permit, certificate or authorization for the land application, marketing or distribution of sewage sludge issued prior to May 1, 2005, shall remain in effect for the remainder of the term specified in such permit, certificate or authorization. Such permits, certificates and authorizations may be amended in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Any amendment after the adoption of the regulations specified in this section shall be in accordance with such regulations.

H. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

I. Not later than January May 1, 20032005, the Board of Health shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under subsection B, in counties, cities or towns that have adopted ordinances in accordance with subsection C. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department of Health Environmental Quality as provided for by regulation. The fee shall not exceed the amount necessary to reimburse the direct costs for a reasonable amount of testing and for the monitoring of the land application of sewage sludge by counties, cities and towns that have adopted such ordinances. The fee shall be imposed on each dry ton of sewage sludge that is

land applied in such counties, cities and towns in accordance with the regulations adopted by the Board of Health. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department of Health Environmental Quality;
2. Retention of proceeds in a special nonreverting fund to be administered by the Department of Health Environmental Quality; and
3. Disbursement of proceeds by the Department of Health Environmental Quality to reimburse counties, cities and towns with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge, as provided for in this subsection.

Article 13.

Sewage Disposal.

§ 62.1-44.34:29. Definitions.

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

"Alternative discharging sewage system" means any device or system that results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Authorized onsite soil evaluator" means a person possessing the qualifications specified by the Board who has successfully completed the course and testing to be authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for traditional onsite sewage disposal systems.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association that owns or proposes to own a sewerage system or treatment works.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the Board.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Transportation" means the vehicular conveyance of sewage.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

§ 62.1-44.34:30. Personal liability of sanitarians defined.

A sanitarian while acting within the scope of his employment in approving or denying applications for permits for onsite sewage disposal systems or while performing checks of or reviewing and approving field evaluations completed by authorized onsite soil evaluators shall be subject to personal liability only for his gross negligence or intentional misconduct.

§ 62.1-44.34:31. Long-range plan for onsite sewage.

In addition to the powers and duties provided in § 62.1-44.34:35 the Board shall develop and revise as may be necessary a 5-year plan for the handling and disposal of onsite sewage. Such plan shall include (i) the number of applications for onsite sewage permits per year; (ii) the number of households or facilities utilizing onsite sewage systems per year; (iii) the volume of onsite sewage to be disposed per year; (iv) the available and needed capacity in the Commonwealth for environmentally sound methods of disposal of septage in sewage treatment plants, other approved facilities and by-land applications per year; (v) descriptions of technology for alternative systems including the types of soils and conditions recommended as appropriate for such alternative systems; and (vi) recommendations for changes in the laws or regulations pertaining to onsite sewage and the system of permitting onsite sewage systems. The Board shall also report every 5 years to the Governor and the General Assembly on the status of onsite sewage handling and disposal in Virginia and the progress in implementing its long range plan.

551 § 62.1-44.34:32. Identities of persons making certain reports to remain confidential.

552 The identity of any person making a report of an alleged violation of any provision of this article or
553 any regulation of the Board relating to sewage disposal shall be confidential. However, the identity of
554 such person may be disclosed (i) to the Director, the members of the Board and personnel of the
555 Department in the performance of their duties; (ii) when the identity is included in materials that are
556 the subject of a request for information pursuant to the Virginia Freedom of Information Act (§ 2.2-3700
557 et seq.); (iii) when the matter reported is the subject of a hearing conducted by the Department of
558 Environmental Quality Sewage Handling and Disposal Appeal Review Board; or (iv) when the matter
559 reported is the subject of litigation.

560 § 62.1-44.34:33. Procedures for application backlogs; individuals approved to conduct evaluations
561 for septic system or other onsite sewage system permit applications.

562 A. In any case where the Department experiences a septic system or other onsite sewage system
563 permit backlog of 15 working days from the application filing date, the Director shall contract with
564 authorized onsite soil evaluators for the field evaluation of the backlogged application sites. The
565 Department shall review these evaluations and may approve the permit applications upon finding that
566 the evaluations are in compliance with the Board's regulations implementing this chapter. The
567 Department shall not be required to do a field check of the evaluation prior to issuing the permit;
568 however, the Department may conduct such field analyses as deemed necessary to protect the integrity
569 of the Commonwealth's environment.

570 B. The Board, Director, and Department shall accept private evaluations for septic system or other
571 onsite sewage system permit applications only from authorized onsite soil evaluators.

572 C. The Board's regulations shall include a definition of backlog providing a set number or a percent
573 of the received applications.

574 § 62.1-44.34:34. Onsite sewage evaluations.

575 A. Notwithstanding other provisions of this chapter, for purposes of subdivision review, permit
576 approval, and issuance of letters for residential development, the Board, Director, and Department shall
577 accept private site evaluations and designs, in compliance with the Board's regulations for septic
578 systems and other onsite sewage systems, designed and certified by a licensed professional engineer, in
579 consultation with an authorized onsite soil evaluator, or by an authorized onsite soil evaluator. The
580 evaluations and designs included within such submissions shall be certified as complying with the
581 Board's regulations implementing this chapter.

582 B. The Department shall not be required to perform a field check of private evaluations and designs
583 prior to issuing the requested letter, permit or approval; however, the Department may conduct such
584 review of the work and field analysis as deemed necessary to protect the public health and integrity of
585 the Commonwealth's environment. Within 15 working days from the date of written submission of a
586 request for approval of a site evaluation and design for a single lot construction permit, and within 60
587 days from the date of written submission of a request for approval of a site evaluation and design for
588 multiple lot certification letters or subdivision review, the Department shall (i) issue the requested letter,
589 permit or approval or (ii) set forth in writing the specific reasons for denial. If the Department fails to
590 take action to approve or disapprove the designs, evaluations, or subdivision reviews within the time
591 specified herein, the designs, evaluations or subdivision reviews shall be deemed approved and the
592 appropriate letter, permit or approval shall be issued. Notwithstanding any other provision of law or the
593 provisions of any local ordinance, counties, cities and towns shall comply with the time limits set forth
594 in this subsection.

595 C. Nothing in this section shall authorize anyone other than an individual licensed as a professional
596 engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 to engage in the practice of
597 engineering.

598 D. The provisions of this section shall not apply to any locality that has entered into a contract with
599 the Board of Health in accordance with Chapter 678 of the 1994 Acts of Assembly nor to a proprietary,
600 pre-engineered septic system deemed by the Department to comply with the Board's regulations.

601 § 62.1-44.34:35. Powers and duties of Board; regulations; fees; authorized onsite soil evaluators;
602 letters in lieu of permits.

603 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,
604 transportation, treatment, and disposal of sewage, all sewerage systems, and treatment works as they
605 affect the public health and welfare. In discharging the responsibility to supervise and control the safe
606 and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board
607 shall exercise due diligence to protect the quality of both surface water and ground water. The
608 regulation of sewage, as it may affect the public health, shall be the responsibility of the Board.

609 In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board
610 shall require and the Department shall conduct regular inspections of alternative discharging sewage
611 systems. The Board shall also establish requirements for maintenance contracts for alternative
612 discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an

alternative discharging sewage system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit issued by the Board.

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Director prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to this chapter;

2. Criteria for the granting or denial of such permits;

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works;

4. Standards governing disposal of sewage on or in soils;

5. Standards specifying the minimum distance between sewerage systems or treatment works; and

a. Public and private wells supplying water for human consumption;

b. Lakes and other impounded waters;

c. Streams and rivers;

d. Shellfish waters;

e. Ground waters;

f. Areas and places of human habitation; and

g. Property lines.

6. Standards as to the adequacy of an approved water supply;

7. Standards governing the transportation of sewage;

8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth;

9. A requirement that such residences, buildings, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works;

10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods;

11. Standards for inspections of and requirements for maintenance contracts for alternative discharging sewage systems;

12. Notwithstanding the provisions of subdivision 1 and other sections of this chapter, a requirement that the owner obtain a permit from the Director prior to the construction, installation, modification, or operation of an alternative discharging sewage system as defined in § 62.1-44.34:29;

13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage systems;

14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system permits;

15. Criteria for approved training courses, testing requirements, and application fees for persons wishing to be authorized onsite soil evaluators; and

16. Procedures for listing, removing from the list, and reinstating on the list those persons who have successfully qualified to be authorized onsite soil evaluators.

C. A fee of \$75 shall be charged for filing an application for an onsite sewage disposal system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 62.1-44.34:37.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage disposal system. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Further, a fee of \$75 shall be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems

674 necessary, to the Department for the purpose of carrying out the provisions of this section. However,
675 \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to
676 § 62.1-44.34:29.

677 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose
678 incomes are below the federal poverty guidelines established by the United States Department of Health
679 and Human Services.

680 F. Any owner who violates any provision of this section or any regulation of the Board relating to
681 alternative discharging sewage systems or who fails to comply with any order of the Board or any
682 special final order of the Board shall be subject to the penalties provided in § 62.1-44.32.

683 In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its
684 agent may initiate a civil action against any user or users of an alternative discharging sewage system
685 to recover that portion of any civil penalty imposed against the owner that directly resulted from
686 violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

687 G. The Board shall establish a program for qualifying individuals as authorized onsite soil
688 evaluators. The Board's program shall include, but not be limited to, approved training courses, written
689 and field tests, application fees to cover the costs of the program, renewal fees and schedules, and
690 procedures for listing, removing from the list, and reinstating individuals as authorized onsite soil
691 evaluators. To contain costs, the Board shall use or enhance the written and field tests given to
692 Department sanitarians as the testing vehicle for authorized onsite soil evaluators. Until July 1, 2001, a
693 person holding a certificate as a Virginia certified professional soil scientist from the Board of
694 Professional Soil Scientists shall be deemed to be qualified, upon application and demonstration of the
695 knowledge, skills, and abilities necessary to conduct onsite soil evaluations, as an authorized onsite soil
696 evaluator without completing the Board's training courses and taking the written and field tests. The
697 Board shall furnish the list of authorized onsite soil evaluators to all Department of Environmental
698 Quality regional offices.

699 H. The Board shall establish and implement procedures for issuance of letters recognizing the
700 appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. Such
701 letters shall state, in language determined by the Office of the Attorney General and approved by the
702 Board, the appropriateness of the soil for a traditional septic or other onsite sewage system; no system
703 design shall be required for issuance of such letter. The letter may be recorded in the land records of
704 the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the
705 septic or other onsite sewage system is to be located so as to be a binding notice to the public,
706 including subsequent purchases of the land in question. Upon the sale or transfer of the land that is the
707 subject of any letter, the letter shall be transferred with the title to the property. A permit shall be
708 issued on the basis of such letter unless, from the date of the letter's issuance, there has been a
709 substantial, intervening change in the soil or site conditions where the septic system or other onsite
710 sewage system is to be located. The Board, Director, and the Department shall accept evaluations from
711 authorized onsite soil evaluators for the issuance of such letters, if they are produced in accordance
712 with the Board's established procedures for issuance of letters. The Department shall issue such letters
713 within 20 working days of the application filing date when evaluations produced by authorized onsite
714 soil evaluators are submitted as supporting documentation. The Department shall not be required to do
715 a field check of the evaluation prior to issuing such a letter or a permit based on such letter; however,
716 the Department may conduct such field analyses as deemed necessary to protect the integrity of the
717 Commonwealth's environment. Applicants for such letters in lieu of onsite sewage system permits shall
718 pay the fee established by the Board for the letters' issuance and, upon application for a septic system
719 permit or other onsite sewage system permit, shall pay the permit application fee.

720 § 62.1-44.34:36. Appeals from denials of septic tank permits.

721 A. Whenever administrative action is taken to deny a septic tank permit or to grant a septic tank
722 permit with conditions or to refuse to issue, or grant with conditions, a letter recognizing the
723 appropriateness of onsite sewage site conditions in lieu of issuing an onsite sewage system permit, the
724 applicant shall be advised in writing of the administrative remedies that are available to obtain a
725 reversal of the denial or refusal or a modification or elimination of the conditions, or, if no further
726 administrative remedies are available, of the right of appeal provided for hereinafter. After exhausting
727 his administrative remedies any person aggrieved by a case decision of the Review Board shall have the
728 right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000
729 et seq.).

730 The decision may be recorded in the land records of the clerk of the circuit court in the jurisdiction
731 where all or part of the site or proposed site of the septic system is located so as to be binding notice
732 to the public, including subsequent purchases of the land in question.

733 B. The holder of any permit for a septic tank issued with conditions shall have the permit recorded
734 in the land records of the clerk of the circuit court having jurisdiction over the site of the septic system.
735 The holder of the permit and any subsequent holders of the permit through land purchase or transfer

shall be bound by the conditions stated in the permit unless the holder or subsequent holder obtains an additional permit for modification or alteration of the septic system to meet any new use conditions.

C. In adopting regulations prescribing criteria for the granting or denial of permits for septic tanks, the Board shall consider varying circumstances such as population density, extent of use of the septic tank and such other circumstances as may affect the stringency of the criteria necessary to protect the public health and promote the general welfare and may provide for the issuance of permits for septic tanks subject to such conditions as may be necessary to protect the public health.

D. Upon receipt of an application for a septic tank permit or a letter recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits, the local health department shall notify the governing body of the county or city where the septic tank will be located or the official designated by the governing body for the purpose and shall provide such information concerning the application and the actions taken on the application as the governing body or officer may request.

§ 62.1-44.34:37. Onsite Sewage Indemnification Fund.

There is hereby created the Onsite Sewage Indemnification Fund to be used to receive moneys generated by a portion of the fees collected by the Department pursuant to subsections C and E of § 62.1-44.34:35 and appropriated by the Commonwealth for the purpose of assisting any Virginia real property owner holding a valid septic tank or other onsite sewage system permit when such system fails within 3 years of construction and such failure results from the negligence of the Department. The fund may also be used, in the discretion of the Board, to support the program for training and recognition of authorized onsite soil evaluators.

Ten dollars of each fee collected by the Department pursuant to subsections C and E of § 62.1-44.34:35 shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department by the General Assembly as it deems necessary.

The owner of a septic tank or other onsite sewage system permitted by the Department may request the Director to review the circumstances of the onsite sewage system failure and grant indemnification from the fund, if the septic tank or other onsite sewage system is permitted by the Department and has failed within 3 years of construction. Upon finding that the system was permitted by the Department and has failed within 3 years of construction and that the failure resulted from Department negligence, the Director shall grant the request for indemnification. If the Director finds that the system was permitted by the Department and has failed within 3 years of construction and that the failure resulted from faulty construction, the Director may assist the owner of the failed system in seeking redress from the system's builder.

If the Director refuses the request for indemnification, the requesting individual may appeal the refusal to the Department of Environmental Quality Sewage Handling and Disposal Appeal Review Board.

The Board may promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the administration of the fund consistent with this chapter.

In the event the fund is insufficient to meet requests for indemnification, this section and the creation of the fund shall not be construed to provide liability on the part of the Department or any of its personnel where no such liability existed prior to July 1, 1994.

§ 62.1-44.34:38. Validity of certain septic tank permits.

Any septic tank permit issued shall be valid for a period of 18 months from the date of issuance unless there has been a substantial, intervening change in the soil or site conditions where the septic system is to be located. However, if a building permit has been obtained or building construction has commenced, the permit may be extended for an additional 18 months. Applicants shall be informed of the septic tank permit validity period and advised to apply only when ready to begin construction.

§ 62.1-44.34:39. Notification of local governing bodies.

Whenever the Board receives an application for land disposal of treated sewage, stabilized sewage sludges or stabilized septage, the Board shall notify the local governing bodies where disposal is to take place of pertinent details of the proposal and establish a date for a public meeting to discuss technical issues relating to the proposal. The Board shall give notice of the date, time and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where land disposal is to take place. Public notice of the scheduled meeting must occur no fewer than 7 nor more than 14 days prior to the meeting. The Board shall not consider the application for land disposal to be complete until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting. This section shall not apply to applications for septic tank permits.

§ 62.1-44.34:40. Septage disposal.

The Board shall have the authority to issue permits that prescribe the terms and conditions upon which septage may be disposed of by land application. Application for disposal permits shall be

submitted in form and content that are satisfactory to the Board. Upon receipt of a satisfactory application, the Board shall comply with the provisions of § 62.1-44.34:39. The Board shall approve or disapprove the application and issue the permit as appropriate. If the application is disapproved the Board shall advise the applicant of the conditions necessary to obtain approval. The Board may summarily revoke or amend the permit if it determines that the septage disposal is adversely affecting public health or if state waters are being adversely affected.

§ 62.1-44.34:41. Land disposal of septage in counties.

The land disposal of lime-stabilized septage and unstabilized septage shall be prohibited. However, until July 1, 1991, land spreading of lime-stabilized septage and shallow injection of unstabilized septage was allowed in counties, if prior approval was obtained from the board of supervisors and a permit was obtained from the Department of Health in accordance with the Board's Regulations on Sewage Handling and Disposal.

§ 62.1-44.34:42. Prior approval required before issuance of building permit.

No county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Director or his agent. The Director or his agent shall authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of said permit has been approved by the Review Board.

§ 62.1-44.34:43. Agreements with federal agencies.

The Board may enter into an agreement with any appropriate federal agency to regulate and monitor the collection, transportation, conveyance, treatment and disposal of sewage from common carriers or at federal facilities pursuant to the Public Health Service Act, United States Public Law 78-410, and any other applicable federal law.

Article 14.

Department of Environmental Quality Sewage Handling and Disposal Appeal Review Board.

§ 62.1-44.34:44. Review Board; members.

There is hereby established, in the Department, the Department of Environmental Quality Sewage Handling and Disposal Appeal Review Board, consisting of 7 members, appointed by the Governor subject to confirmation by the General Assembly. The members shall include 1 member who is a soil scientist; 1 member who is a professional engineer in private practice; 1 member who is a residential builder; 1 member who is an academic professional engaged in research and teaching in a soils-related discipline; 1 member who has had experience in the field of enforcement of onsite sewage disposal regulations; 1 member who is engaged in private soils analysis work related to the installation of onsite sewage systems; and 1 member from the public at large who may have experience in the installation of onsite sewage systems. The members shall serve at the pleasure of the Governor.

§ 62.1-44.34:45. Officers; secretary.

The Review Board, under rules adopted by itself, shall elect 1 of its members as chairman, for a term of 2 years, and may elect 1 of its members as vice-chairman. The Review Board may also elect a secretary, who may be a nonmember.

§ 62.1-44.34:46. Oath.

Before entering upon the discharge of their duties, all members of the Review Board shall take an oath that they will faithfully and honestly execute the duties of their office during their continuance therein.

§ 62.1-44.34:47. Meetings.

The Review Board shall meet 8 times per year to hear appeals of denials of applications for onsite sewage disposal systems.

Any appeal shall be filed 30 days prior to a meeting in order to be placed on the docket. The Review Board shall provide its decision in writing within 15 days of the date of the hearing to the person making the appeal, his representative and the Department.

§ 62.1-44.34:48. Offices.

The Review Board shall be furnished adequate space and quarters in the suite of offices of the Department, where the Board's main office shall be located.

§ 62.1-44.34:49. Review Board to hear appeals.

The Review Board shall hear all administrative appeals of denials of onsite sewage disposal system permits and appeals of refusals of indemnification requests filed pursuant to § 62.1-44.34:37 and render its decision on any such appeal, which decision shall be the final administrative decision. Proceedings of the Review Board and appeals of its decisions shall be governed by the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

In addition to the authority to render a final administrative decision, the Review Board, in its discretion, may develop recommendations for alternative solutions to the conditions resulting in denial of the permit or refusal to indemnify and remand the case to the Department for reconsideration.

§ 62.1-44.34:50. Subpoenas; witnesses; designation of subordinates.

In any matter before it on appeal for hearing and determination, the Review Board or its designated subordinates may compel the attendance of all needed witnesses in like manner as a circuit court, save the Review Board shall not have the power of imprisonment. In taking evidence, the chairman or any member of the Review Board, or its designated subordinates, shall have the power to administer oaths to witnesses. Where a designated subordinate of the Review Board presides over hearings on appeals, such subordinate shall submit recommended findings and a decision to the Review Board pursuant to § 2.2-4020.

§ 62.1-44.34:51. Record of decisions.

A record of all decisions of the Review Board, properly indexed, shall be kept in the office of such Review Board. The records shall be open to public inspection at all times during business hours.

§ 62.1-44.34:52. Interpretation of application of regulations; recommendation of modifications.

The Review Board shall interpret the application of the provisions of the Sewage Handling and Disposal Regulations in its review of appeals and shall make such recommendations, as it deems appropriate, to the Board for modification, amendment or repeal of any such provisions of the regulations. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

§ 62.1-44.34:53. Appeals fees.

The Department shall establish a reasonable fee to be charged to the appealing party commensurate with the time and expenses related to the handling of each appeal.

Article 15.

Public Water Supplies.

§ 62.1-44.34:54. Regulations.

The regulations of the Board governing waterworks, water supplies, and pure water shall be designed to protect the public health and promote the public welfare and shall include criteria and procedures to accomplish these purposes.

The regulations may include, without limitation:

- 1. Requirements and procedures for the issuance of permits required by this article;*
 - 2. Minimum health and aesthetic standards for pure water;*
 - 3. Minimum standards for the quality of water that may be taken into a waterworks;*
 - 4. Criteria for the siting, design, and construction of water supplies and waterworks;*
 - 5. Requirements for inspections, examinations, and testing of raw or finished water;*
 - 6. A requirement that owners submit (i) regular samples of water for bacteriological, chemical, radiological, physical, or other tests or (ii) the results of such tests from such laboratory as may be acceptable to the Director;*
 - 7. Requirements for recordkeeping and reporting;*
 - 8. Methodology for determining the waterworks operation fee authorized by § 62.1-44.34:57; and*
 - 9. Such other provisions as may be necessary to guarantee a supply of pure water.*
- Any permit issued prior to July 1, 2003, shall remain in effect for the remainder of the term specified in such permit. Such permits may be amended or revoked in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the provisions of this chapter. Any amendment after the adoption of the regulations specified in this section shall be in accordance with such regulations.*

§ 62.1-44.34:55. Exemptions.

The provisions of this article shall not be applicable to a waterworks that meets all of the following conditions:

- 1. The waterworks consists only of distribution and storage facilities and does not have any collection or treatment facilities;*
- 2. The waterworks obtains all of its water from, but is not owned or operated by, a waterworks to which this article is applicable;*
- 3. The waterworks does not sell water to any person; and*
- 4. The waterworks is not a carrier that conveys passengers in interstate commerce.*

§ 62.1-44.34:56. Technical assistance as to sources and purity.

The Director shall, upon request and without charge, provide technical assistance to owners regarding the most appropriate source of water supply and the best method of assuring pure water, but the Director shall not prepare plans, specifications or detailed estimates for such owners. The technical assistance provided by this section shall be exclusive of the Waterworks Technical Assistance Program required by § 62.1-44.34:57.

§ 62.1-44.34:57. Waterworks operation fee required; special fund established; certain technical assistance program to be provided.

A. Every owner of a waterworks shall pay to the Department a waterworks operation fee of no more than \$160,000 per year. Based upon the number of persons served, the number of connections, or the

920 classification of the waterworks, the Board shall, pursuant to its regulations, establish the fee to be
921 charged each such owner and may exempt sizes and classes from the required fee. Any fee in excess of
922 \$10,000 shall be payable quarterly. The Board shall adjust the fee schedule so that the revenues from
923 such fees cover the costs necessary to operate the Waterworks Technical Assistance Program required
924 by this section. These fees shall be exempt from statewide indirect costs charged and collected by the
925 Department of Accounts.

926 B. In order to assist waterworks owners in complying with the requirements of the Safe Drinking
927 Water Act (42 U.S.C. § 300 et seq.) and associated state regulations, there is hereby established in the
928 state treasury a special fund to be known as the Waterworks Technical Assistance Fund, referred to in
929 this article as "the Fund." The fees required by this section shall be transmitted to the Comptroller to be
930 deposited into the Fund. The income and principal of the Fund shall be used only and exclusively for
931 the technical assistance required by this section. The State Treasurer shall be custodian of the moneys
932 deposited in the Fund. No part of the Fund, either principal or interest earned thereon, shall revert to
933 the general fund of the state treasury.

934 C. Moneys in the Fund shall be used by the Department to conduct the Waterworks Technical
935 Assistance Program, which shall include, but need not be limited to: (i) training for operator
936 certification, (ii) engineering evaluation and advice, (iii) sample collection for laboratory analysis, and
937 (iv) educational seminars.

938 § 62.1-44.34:58. Water Supply Assistance Grant Fund established.

939 A. There is hereby created in the state treasury a special nonreverting fund to be known as the
940 Water Supply Assistance Grant Fund, hereafter referred to as "the Fund." The Fund shall be established
941 on the books of the Comptroller. All funds appropriated as matching funds for moneys available through
942 the federal Safe Drinking Water Act, all penalties and charges directed to this fund, and all other funds
943 from any public or private source directed to the Fund shall be paid into the state treasury and credited
944 to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
945 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
946 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the
947 purposes found in subsection B. Expenditures and disbursements from the Fund shall be made by the
948 State Treasurer on warrants issued by the Comptroller upon written request signed by the Director at
949 the direction of the Board. The Fund shall be exempt from statewide indirect costs charged and
950 collected by the Department of Accounts.

951 B. The Board shall utilize the moneys appropriated as matching funds for that purpose and, subject
952 to other available funds, may make Water Supply Assistance Grants from the Fund to localities and the
953 owners of waterworks to assist in the provision of drinking water. The Board shall develop guidelines
954 establishing the (i) criteria for grant eligibility, (ii) conditions to be included in grants, and (iii) grant
955 distribution priorities. Among the factors that shall be included in the criteria for grant eligibility and in
956 the grant distribution priorities shall be the financial condition of the locality wherein a grant is sought.

957 C. The Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the development of
958 guidelines for the Fund. However, the process for development of the guidelines by the Board shall
959 include (i) the use of an advisory committee composed of interested parties, (ii) a minimum 60-day
960 public comment period on draft guidelines followed by a public hearing, (iii) written responses to all
961 comments received, and (iv) notice of the availability of draft guidelines and final guidelines to all who
962 request such notice.

963 § 62.1-44.34:59. Permit required.

964 A. No owner shall establish, construct or operate any waterworks or water supply in the
965 Commonwealth without a written permit from the Director, except for the extension of water distribution
966 piping having a diameter of 8 inches or less and serving less than 15 equivalent residential connections.

967 B. The application for such a permit shall comply with regulations of the Board and shall be
968 accompanied by a certified copy of the maps, plans and specifications for the construction of such
969 waterworks, a description of the source or sources from which it is proposed to derive the water supply
970 and the manner of storage, purification or treatment proposed for the water supply prior to its delivery
971 to consumers.

972 The application also shall include a comprehensive business plan detailing the technical, managerial,
973 and financial commitments to be made by the owner in order to assure that system performance
974 requirements for providing the water supply will be met over the long term. The Board, in consultation
975 with the State Corporation Commission, shall establish the criteria to be used by the applicant in the
976 development of a business plan.

977 In addition, the Board may require the submission of a business plan by those existing waterworks
978 that have demonstrated significant noncompliance with the waterworks regulations. The Board may
979 waive the requirement for submission of a comprehensive business plan for applicants who have
980 demonstrated a history of acceptable compliance with waterworks regulations.

981 If any applicant so requests, the Board shall not disclose the contents of the comprehensive business

plan except as necessary to perform its duties.

C. The permit may state the permitted capacity of the waterworks, the permitted source or sources of the water supply, the permitted manner of storage, purification and treatment for the water supply and such other conditions as the Director may deem necessary to afford a supply of pure water.

D. Except as may be provided by regulation of the Board, no other source of water supply shall subsequently be used for any such waterworks, nor shall any change in the manner of storage, purification and treatment of the water supply be made without obtaining an additional or amended permit.

E. Whenever application shall be made to the Director for a permit, he shall examine the application and, as soon as practicable thereafter, shall issue the permit if, in his judgment, the proposed waterworks will furnish pure water. If the proposed waterworks is not in compliance with all regulations of the Board but, in the opinion of the Director, the public health will not be jeopardized, the Director may issue a temporary permit for such period of time and subject to such conditions as the Director may deem appropriate for the owner to achieve compliance with such regulations.

F. No permit shall be assigned or transferred.
§ 62.1-44.34:60. Additional or amended permits.

A. Any owner intending to make changes, alterations or improvements to a waterworks for which a permit has been granted shall apply to the Director for an additional or amended permit in a manner prescribed by regulations of the Board. The Director shall review and act upon the application in the manner set forth in § 62.1-44.34:59.

B. The Director may, on his own motion, amend any permit whenever he determines that:

1. The existing permit is no longer valid;
2. Changes, alterations, or improvements to the waterworks are necessary to provide an adequate supply of pure water; or

3. A change has occurred in the manner of storage or treatment or the source of the water supply.

§ 62.1-44.34:61. Increase in charges to finance required changes.

Any owner required to make any change, alteration or improvement in its waterworks or water supply may increase its charges for water to finance or defray the cost of such change, alteration or improvement and any extra costs incident to the maintenance and operation thereof.

§ 62.1-44.34:62. Revocation of permits.

The Director may revoke any permit issued pursuant to this article whenever he determines that:

1. The waterworks can no longer be depended upon to furnish pure water;
2. The capacity of the waterworks is inadequate for the purpose of furnishing pure water;
3. The owner has failed to abide by an order issued by the Director;
4. The owner has abandoned the waterworks and discontinued supplying pure water; or
5. The owner has failed to pay the waterworks operation fee required by § 62.1-44.34:57.

§ 62.1-44.34:63. Bonds of permit holders.

A. The Board may by regulation require owners holding or issued permits for waterworks pursuant to this article to post bonds or deposit funds to be placed in escrow.

B. The Board or the governing body of a county, city or town in which a waterworks is located may request the circuit court having jurisdiction where the waterworks is located to order forfeiture of the owner's bond or escrow account when:

1. The owner fails to pay the electric utility bills for the waterworks;
2. The owner ceases to operate the waterworks; or
3. The owner fails to provide water to his customers for a period of time greater than 48 hours except when a natural disaster prevents the owner from supplying water.

The court shall order forfeiture of such bond or escrow account, in whole or in part, if any of the 3 foregoing conditions is met unless the court finds the forfeiture would result in manifest injustice.

C. In addition to ordering such forfeiture, the court may, with the concurrence of the governing body of the county, city or town in which the waterworks is located, place the waterworks in receivership naming the county, city or town, or any public service authority created by the county, city or town, as receiver.

D. Any sums forfeited pursuant to subdivision B 1 shall be paid in the amount of such forfeiture to the electric utility supplying electrical power to the waterworks. Any sums forfeited pursuant to subdivision B 2 or B 3 shall be paid in the amount of such forfeiture to the county, city or town in which the waterworks is located (i) if the county, city or town, or a public service authority created by the county, city or town, initiates eminent domain proceedings for the condemnation of the waterworks within 1 year of the date of the order of forfeiture or (ii) if the county, city, town or public service authority operates the waterworks pursuant to a decree of an appropriate circuit court vesting receivership of the waterworks in the county, city, town or public service authority. If the governing body of the county, city or town, or a public service authority created by the county, city or town, fails

1043 to initiate such condemnation proceedings within 1 year of the date of forfeiture of any bond or to
1044 accept receivership of the waterworks from the circuit court, the funds forfeited shall be paid to the
1045 general fund of the Commonwealth.

1046 E. The Board may adopt regulations for determining the amount of the bond or funds to be placed
1047 in escrow based upon the number of persons served, the number of connections served, and the water
1048 supply capacity of the permit holder.

1049 F. No state, local or other governmental agency shall be required to post a bond or deposit funds.
1050 The Board may, by regulation, exempt classes of permit holders from such requirements if the Board
1051 determines such classes present no significant risks to public health and safety.

1052 G. An acceptable bond for the purposes of this section shall be a bond issued by a fidelity or surety
1053 company authorized to do business in Virginia, a personal bond secured by such collateral as the Board
1054 may require or a cash bond.

1055 § 62.1-44.34:64. Duties of electric utilities.

1056 No electric utility shall disconnect electrical service to any waterworks holding a permit issued
1057 pursuant to this article until the utility has (i) provided 60 days' written notice to the Board of its intent
1058 to disconnect electrical service to the waterworks; (ii) filed with the Board at least 60 days prior to the
1059 disconnection a written request that the Board initiate forfeiture proceedings against any bond posted or
1060 funds deposited by the permit holder; and (iii) provided 60 days' written notice to the governing body of
1061 the county, city or town in which the waterworks is located.

1062 § 62.1-44.34:65. Emergency orders; appeal.

1063 A. The Director may issue emergency orders in any case where there is an imminent danger to the
1064 public health and welfare resulting from the operation of any waterworks or the source of a water
1065 supply. The Director may order the immediate cessation of the operation of any waterworks or the use
1066 of any water supply or the correction of any condition causing the production or distribution of any
1067 water constituting an imminent danger to the public health and welfare. Emergency orders shall be
1068 effective for a period determined by the Director.

1069 B. An emergency order issued by the Director may be appealed in accordance with the provisions of
1070 the Administrative Process Act (§ 2.2-4000 et seq.).

1071 § 62.1-44.34:66. Issuance of special orders.

1072 Notwithstanding any other provision of law and to the extent consistent with federal requirements,
1073 following a proceeding as provided in § 2.2-4019, the Board may issue a special order that may include
1074 a civil penalty against an owner who violates this article or any order or regulation adopted thereto by
1075 the Board. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001.
1076 Civil penalties collected pursuant to this section shall be paid into the state treasury and credited to the
1077 Water Supply Assistance Grant Fund created pursuant to § 62.1-44.34:64.

1078 § 62.1-44.34:67. Notice to local government.

1079 A. Upon issuing a notice of violation of any provision of regulation promulgated pursuant to this
1080 article to the owner of a waterworks or water supply, the Director shall simultaneously notify the chief
1081 administrative officer or his designee of the county, city or town in which such waterworks or water
1082 supply is located.

1083 B. Spotsylvania County is authorized to enact an ordinance requiring the owner of any waterworks
1084 or water supply located in the county to provide the chief administrative officer of the county with the
1085 results of all tests performed on such waterworks or water supply.

1086 § 62.1-44.34:68. Penalty.

1087 In addition to the provisions of § 62.1-44.34:57, any owner who violates any provisions of this
1088 article or any order or regulation adopted pursuant thereto shall, upon such finding by a court of
1089 competent jurisdiction, be assessed a civil penalty of not more than \$5,000 for each day of such
1090 violation. All penalties under this section shall be recovered in a civil action brought by the Attorney
1091 General in the name of the Commonwealth. Civil penalties collected pursuant to this section shall be
1092 paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to
1093 § 62.1-44.34:58.

1094 Article 16.

1095 Private Well Construction.

1096 § 62.1-44.34:69. Short title.

1097 This article shall be known and may be cited as the "Virginia Private Well Construction Act."

1098 § 62.1-44.34:70. Findings and policy.

1099 The General Assembly finds that the improper construction of private wells can adversely affect
1100 aquifers as ground water resources in the Commonwealth. Consistent with the duty to protect these
1101 ground water resources and to safeguard the public welfare, safety and health it is declared to be the
1102 policy of the Commonwealth to require that the construction and location of private wells conform to
1103 reasonable requirements.

1104 § 62.1-44.34:71. Definitions.

As used in this article:

"Construction of wells" means acts necessary to construct wells, including the location of wells.

"Private well" means any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, ground water source heat pump, agricultural use, industrial use or other nonpublic water well.

§ 62.1-44.34:72. Powers and duties of Board and Department; regulations; fees.

A. The Board shall adopt regulations pertaining to the location and construction of private wells in the Commonwealth. The Department shall enforce the provisions of this article and any rules and regulations adopted pursuant thereto. However, for private wells located in the Counties of James City, Fairfax, Loudoun, Powhatan, and Prince William and the City of Suffolk, the governing body of such county or city may, by ordinance, establish standards that are consistent with Board standards pertaining to location and testing of water therefrom and more stringent than those adopted by the Board pertaining to construction and abandonment. However, any county or city granted these additional powers shall not require certification for drillers of monitoring wells and any recovery wells associated with such monitoring wells.

B. A fee of \$40 shall be charged for filing an application for a private well construction permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for replacement of a well. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

§ 62.1-44.34:73. Construction permit; local government authority to require analysis of water.

A. Any person intending to construct a private well shall apply to the Department for and receive a permit before proceeding with construction. This permit shall be issued no later than sixty days from application and in accordance with the Board's regulations. In addition, an inspection shall be made after construction to assure that the construction standards are met.

B. The local governing bodies of the Counties of Albemarle, Chesterfield, Clarke, Culpeper, Fairfax, Fauquier, James City, Loudoun, Orange, Powhatan, Prince William, Rappahannock, Stafford, and York and the Cities of Manassas, Manassas Park, Suffolk, and Virginia Beach may by ordinance establish reasonable testing requirements to determine compliance with existing federal or state drinking water quality standards and require that such testing be done prior to the issuance of building permits. Such testing requirements shall apply only to building permit applicants proposing to utilize private ground water wells as their primary potable water source. In developing such an ordinance, the local governing body shall consider (i) the appropriate ground water constituents to be tested using the above standards as guidance; (ii) the reasonable cost of such testing that may be borne by the applicant; and (iii) the availability of certified laboratories to perform such services. However, no such test shall be conducted by Consolidated Laboratories. The applicant shall be notified of the test results with respect to such established standards.

§ 62.1-44.34:74. Department to test for oil contamination; maintain lists of private laboratories.

A. The Department shall disseminate the information on confirmed oil releases and discharges, contained in the Department's monthly report prepared pursuant to § 62.1-44.15:4.1, to local health departments and Department field offices. Local health departments and field offices shall make the reports available for public inspection.

B. Upon the request of any person whose private well is located in an area, as defined by the Department, where an oil release or discharge has been confirmed in the reports prepared by the Department, the Department shall test the water supply of the private well for the presence of oil to determine whether there is risk to public health. The costs of such tests shall be borne by the person requesting the test, unless the Department finds the oil release or discharge poses a potential risk to the health of persons using that private well.

C. The Department shall maintain and make available, upon the request of any person, a list of various private companies located throughout the Commonwealth that possess the technical expertise to analyze water samples for the presence of oil constituents. Any private company providing such laboratory testing services may contact the Department and shall have its name placed on the list. The placement of a company on the list shall not constitute an endorsement of any company or its services.

§ 62.1-44.34:75. Inspection.

The Department shall have the authority to conduct such inspections as it may find reasonably necessary to ensure that the construction work conforms to applicable construction standards.

§ 62.1-44.34:76. Other agencies to cooperate with Department.

1166 *The Department of Housing and Community Development and the Department of Health shall*
1167 *cooperate fully and promptly with the State Water Control Board in the administration of this article.*

1168 § 62.1-233. Definitions.

1169 As used in this chapter, unless a different meaning clearly appears from the context:

1170 "Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of this
1171 title.

1172 "Board" means the ~~Board of Health~~ State Water Control Board.

1173 "Cost," as applied to any project financed under the provisions of this chapter, means the total of all
1174 costs incurred as reasonable and necessary for carrying out all works and undertakings necessary or
1175 incident to the accomplishment of any project. It includes, without limitation, all necessary
1176 developmental, planning and feasibility studies, surveys, plans and specifications, architectural,
1177 engineering, financial, legal or other special services, the cost of acquisition of land and any buildings
1178 and improvements thereon, including the discharge of any obligations of the sellers of such land,
1179 buildings or improvements, site preparation and development, including demolition or removal of
1180 existing structures, construction and reconstruction, labor, materials, machinery and equipment, the
1181 reasonable costs of financing incurred in the course of the development of the project, carrying charges
1182 incurred before placing the project in service, interest on funds borrowed to finance the project to a date
1183 subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in
1184 connection with placing the project in service, the funding of accounts and reserves which the Authority
1185 may require and the cost of other items which the Authority determines to be reasonable and necessary.

1186 "Fund" means the Virginia Water Supply Revolving Fund created by this chapter.

1187 "Local government" means any county, city, town, municipal corporation, authority, district,
1188 commission or political subdivision created by the General Assembly or pursuant to the Constitution or
1189 laws of the Commonwealth or any combination of any two or more of the foregoing.

1190 "Noncommunity waterworks" means a waterworks that serves an average of at least twenty-five
1191 individuals for at least sixty days out of the year and such individuals are not year-round residents.

1192 "Other entities" means owners of waterworks; however, this term does not include the federal
1193 government or owners of noncommunity waterworks operated for profit.

1194 "Project" means any water supply facility which serves primarily residents of the Commonwealth or
1195 which is located or to be located in the Commonwealth. The term includes, without limitation, water
1196 supply and intake facilities; water treatment and filtration facilities; water storage facilities; water
1197 distribution facilities; related office, administrative, storage, maintenance and laboratory facilities; and
1198 interests in land related thereto.

1199 "Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public,
1200 (ii) at least fifteen connections or (iii) an average of twenty-five individuals for at least sixty days out of
1201 the year. The term includes all structures, equipment and appurtenances used in the storage, collection,
1202 purification, treatment and distribution of pure water except the piping and fixtures inside the building
1203 where such water is delivered.

1204 2. That Articles 1 (§§ 32.1-163 through 32.1-166), 1.1 (§§ 32.1-166.1 through 32.1-166.10), 2
1205 (§§ 32.1-167 through 32.1-176), and 2.1 (§§ 32.1-176.1 through 32.1-176.7) of Chapter 6 of Title
1206 32.1 and § 32.1-248.2 of the Code of Virginia are repealed.

1207 3. That the provisions of this act do not go into effect until 30 days after the Governor certifies
1208 that the United States Environmental Protection Agency has granted authorization for
1209 administration of the programs by the Department of Environmental Quality.

1210 4. That any regulations promulgated by the State Board of Health shall remain in effect until
1211 amended or repealed by the State Water Control Board.

1212 5. That the Governor may transfer an appropriation or any portion thereof within a state agency
1213 established, abolished, or otherwise affected by the provisions of this act, or from one such agency
1214 to another, to support the changes in organization or responsibility resulting from or required by
1215 the provisions of this act.

1216 6. That the Governor may transfer employees within any state agency established or otherwise
1217 affected by the provisions of this act, or from such agency to another, to support changes in the
1218 organization or responsibility resulting from or required by the provisions of this act.