

VIRGINIA ACTS OF ASSEMBLY -- 2004 RECONVENED SESSION

CHAPTER 1018

An Act to amend and reenact §§ 28.2-1205, 28.2-1206, and 28.2-1208 of the Code of Virginia, relating to royalties for use of state-owned bottomland.

[S 606]

Approved April 21, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-1205, 28.2-1206, and 28.2-1208, the Code of Virginia are amended and reenacted as follows:

§ 28.2-1205. Permits for the use of state-owned bottomlands.

A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-10 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia. The Commission shall also consider the project's effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;
2. Marine and fisheries resources of the Commonwealth;
3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this title;

4. Adjacent or nearby properties;

5. Water quality; and

6. Submerged aquatic vegetation (SAV).

B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine Science, the State Water Control Board, the Virginia Department of Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit application relates to or affects the particular concerns or activities of those agencies.

C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Commission a plan for sewage treatment or disposal facilities ~~which~~ *that* has been approved by the State Department of Health.

D. A permit is required and shall be issued by the Commission for placement of any private pier measuring 100 or more feet in length from the mean low-water mark, which is used for noncommercial purposes by an owner of the riparian land in the waters opposite the land, and that traverses commercially productive leased oyster or clam grounds, as defined in § 28.2-630, provided that the pier does not extend beyond the navigation line established by the Commission or the United States Army Corps of Engineers. The permit may reasonably prescribe the design and location of the pier for the sole purpose of minimizing the adverse impact on such oyster or clam grounds or the harvesting or propagation of oysters or clams therefrom. The permit shall contain no other conditions or requirements. Unless information or circumstances materially alter the conditions under which the permit would be issued, the Commission shall act within ~~ninety~~ 90 days of receipt of a complete joint permit application to approve or deny the application. If the Commission fails to act within that time, the application shall be deemed approved and the applicant shall be notified of the deemed approval.

E. All permits issued by the Commission for the use of state-owned bottomlands *pursuant to § 28.2-1204*, or to recover underwater historic property shall be in writing and specify the conditions, and terms ~~and royalties which~~ *that* the Commission determines are appropriate, *and royalties unless prohibited under other provisions of this chapter.*

F. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). However, any decision made by the Commission hereunder consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-10 shall not be deemed to have been made pursuant to the police power. Nothing in this subsection shall be construed to deprive a riparian landowner of such rights as he may have under common law.

§ 28.2-1206. Permit fees; exemptions.

A. The fee paid to the Commission for issuing each permit to recover underwater historic property shall be ~~twenty-five dollars~~ \$25.

B. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall be

~~twenty-five dollars \$25~~, but if the cost of the project is to exceed \$10,000, the fee paid shall be \$100. *Riparian owners of (i) commercial facilities engaged in the primary business of ship construction and or repair may elect to pay a one-time permit fee of up to \$5,000 in lieu of any other royalties, (ii) commercial facilities providing services relating to the shipping of domestic or foreign cargo, and (iii) commercial facilities engaged in the business of selling or servicing watercraft shall be exempt from the payment of rents and royalties, except that royalties for removal of bottom material shall be charged as provided in subsection C.*

C. When the activity or project for which a permit is requested will involve the removal of bottom material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less than ~~twenty cents \$0.20~~, nor more than ~~sixty cents \$0.60~~, per cubic yard of bottom material removed. In fixing the amount of the royalty, the Commission shall consider, among other factors, the following:

1. The primary and secondary purposes for removing the bottom material;
2. Whether the material has any commercial value and whether it will be used for any commercial purpose;
3. The use to be made of the removed material and any public benefit or adverse effect upon the public ~~which~~ *that* will result from the removal or disposal of the material;
4. The physical characteristics of the material to be removed; and
5. The expense of removing and disposing of the material.

D. Where it appears that the project or facility for which a permit application is made has been completed or work thereon commenced at the time application is made, the Commission may impose additional assessments not to exceed an amount of three times the normal permit fee and royalties, *unless such royalties are prohibited by this chapter.*

E. Bottom material removed attendant to maintenance dredging *or directional drilling* shall be exempt from any royalty. The Virginia Department of Transportation shall be exempt from all fees, *rents* and royalties otherwise assessable under this section. All counties, cities, and towns of the Commonwealth shall pay the required permit fee but shall be exempt from all other fees, *rents* and royalties assessable under this section if the permit is issued prior to the commencement of any work to be accomplished under the permit.

F. All fees, *rents* and royalties collected pursuant to this chapter on and after July 1, 2000, shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.

§ 28.2-1208. Granting easements in or leasing the beds of certain waters.

A. The Marine Resources Commission may, with the approval of the Attorney General and the Governor, grant easements ~~in~~ *over or under* or lease the beds of the waters of the Commonwealth outside of the Baylor Survey. Every easement or lease executed pursuant to this section shall be for a period not to exceed five years and shall specify the rent ~~royalties~~ and such other terms deemed expedient and proper. Such easements and leases may include the right to renew the same for an additional period not to exceed five years, and, in addition to any other rights, may authorize the grantees ~~and or~~ lessees to prospect for and take from the bottoms covered thereby, oil, gas, and other specified minerals and mineral substances; *provided, however, that any easement or lease granting the right to prospect for oil, gas, and other minerals shall require a royalty. The purchase payment for any easement granted to a public service corporation, certificated telephone company, interstate natural gas company or provider of cable television or other multichannel video programming service shall be \$100 and shall be for a period of 40 years.* However, no easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the Commonwealth concerning fishing, fowling, and the catching and taking of oysters and other shellfish in and from the leased bottoms or the waters above.

B. All easements granted and leases made pursuant to this section shall be executed for, and in the name and on behalf of, the Commonwealth by the Attorney General and shall be countersigned by the Governor.

C. All ~~rents or~~ *oil, gas and other minerals* royalties collected from such easements or leases on and after July 1, 2000, shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.

D. Prior to December 1 of each year, the Commissioner and the Attorney General shall make reports to the General Assembly on all easements and leases executed pursuant to this section during the preceding ~~twelve~~ 12 months.

E. The Commission shall, in cooperation with the Division of Mineral Resources of the Department of Mines, Minerals and Energy and with the assistance of affected state agencies, departments and institutions, maintain a State Subaqueous Minerals Management Plan ~~which~~ *that* shall supplement the State Minerals Management Plan set forth in § 2.2-1157. The State Subaqueous Minerals Management Plan shall include provisions for (i) the holding of public hearings, (ii) public advertising for competitive bids or proposals for mineral leasing and extraction activities, (iii) preparation of environmental impact reports to be reviewed by the appropriate agency of the Commonwealth, and (iv) review and approval of leases by the Attorney General and the Governor as required by subsection A. The environmental impact reports shall address, but not be limited to:

1. The environmental impact of the proposed activity;
2. Any adverse environmental effects ~~which~~ *that* cannot be avoided if the proposed activity is undertaken;
3. Measures proposed to minimize the impact of the proposed activity;
4. Any alternative to the proposed activity; and
5. Any irreversible environmental changes which would be involved in the proposed activity.

For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

2. That, notwithstanding any provision of law to the contrary, every uncollected rent or royalty assessed by the Virginia Marine Resources Commission prior to July 1, 2004, other than royalties assessed under subsection C of § 28.2-1206, shall be cancelled and null and void. Such cancellation shall run with the land and to the benefit of the lessees and grantees and their heirs, successors and assigns. Not later than 180 days from the effective date of this act, the Virginia Marine Resources Commission shall mail to every such grantee and lessee written notification of the cancellation of such rents and royalties.

3. That the Commission shall not assess and collect any rents or royalties, except pursuant to subsection C of § 28.2-1206, until July 1, 2005.