

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 655

An Act to amend and reenact § 62.1-44.19:5 of the Code of Virginia, relating to citizen nominations of waterways to be monitored.

[H 2483]

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:5 of the Code of Virginia is amended and reenacted as follows:

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

A. The Board shall develop the reports required by § 1313(d) (hereafter the 303(d) report) and § 1315(b) (hereafter the 305(b) report) of the Clean Water Act in a manner such that the reports will: (i) provide an accurate and comprehensive assessment of the quality of state surface waters; (ii) identify trends in water quality for specific and easily identifiable geographically defined water segments; (iii) provide a basis for developing initiatives and programs to address current and potential water quality impairment; (iv) be consistent and comparable documents; and (v) contain accurate and comparable data that is representative of the state as a whole. The reports shall be produced in accordance with the schedule required by federal law, but shall incorporate at least the preceding five years of data. Data older than five years shall be incorporated when scientifically appropriate for trend analysis. The Board shall conduct monitoring as described in subsection B and consider and incorporate factors as described in subsection C into the reports. The Board may conduct additional monitoring and consider and incorporate other factors or information it deems appropriate or necessary.

B. Monitoring shall be conducted so that it:

1. Establishes consistent siting and monitoring techniques to ensure data reliability, comparability of data collected throughout the state, and ability to determine water quality trends within specific and easily identifiable geographically defined water segments.

2. Expands the percentage of river and stream miles monitored so as ultimately to be representative of all river and stream miles in the state according to a developed plan and schedule. Contingent upon the appropriation of adequate funding for this purpose, the number of water quality monitoring stations and the frequency of sampling shall be increased by at least five percent annually, until such representative monitoring is achieved, and shall be expanded first to water bodies for which there is credible evidence to support an indication of impairment.

3. Monitors, according to a plan and schedule, for all substances that are discharged to state waters and that are: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act; (iii) subject to water quality standards; or (iv) necessary to determine water quality conditions. The Board shall update the plan annually. The Board shall develop and implement the plan and schedule for the phasing in of monitoring required by this subdivision. The Board shall, upon development of the plan, publish notice in the Virginia Register that the plan is available for public inspection.

4. Provides, according to the plan in subdivision B 3, for increased use, as necessary, beyond 1996 levels, of sediment monitoring as well as benthic macro-invertebrate organisms and fish tissue monitoring, and provides for specific assessments of water quality based on the results of such monitoring. Contingent upon the appropriation of adequate funding for this purpose, all fish tissue and sediment monitoring for the segments identified in the water quality monitoring plan shall occur at least once every three years.

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

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

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

C. The 303(d) report shall:

1. In addition to such other categories as the Board deems necessary or appropriate, identify geographically defined water segments as impaired if monitoring or other evidence shows: (i) violations of ambient water quality standards or human health standards; (ii) fishing restrictions or advisories; (iii) shellfish consumption restrictions due to contamination; (iv) nutrient over-enrichment; (v) significant declines in aquatic life biodiversity or populations; or (vi) contamination of sediment at levels which

violate water quality standards or threaten aquatic life or human health. Waters identified as "naturally impaired," "fully supporting but threatened," or "evaluated (without monitoring) as impaired" shall be set out in the report in the same format as those listed as "impaired." The Board shall develop and publish a procedure governing its process for defining and determining impaired water segments and shall provide for public comment on the procedure.

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

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

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

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

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

F. The Board shall accept and review requests from the public regarding specific segments that should be included in the water quality monitoring plan described in subdivision B 3 of this section. Each request received by ~~December 31 of the preceding year~~ *April 30* shall be reviewed when the agency develops or updates the water quality monitoring plan. Such requests shall include (i) a geographical description of the waterbody recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. The Board shall respond in writing, either approving the request or stating the reasons a request under this subsection has been denied, by ~~April 30~~ *August 31* for requests received by ~~December 31~~ *April 30* of the ~~preceding~~ *same* year. Such determination shall not be a regulation or case decision as defined by § 2.2-4001.