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**SENATE BILL NO. 798**

Offered January 10, 2007

Prefiled January 3, 2007

*A BILL to amend and reenact §§ 62.1-44.19:2 and 62.1-44.29 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-44.19:2.1, relating to the prevention of sewage overflows and the pollution of state waters.*

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 Referred to Committee on Agriculture, Conservation and Natural Resources
 

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

**1. That §§ 62.1-44.19:2 and 62.1-44.29 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-44.19:2.1 as follows:**

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

§62.1-44.19:2. On and after January one, nineteen hundred seventy-three, all sewage pumping stations in Chesapeake, Newport News, Hampton, Norfolk and Virginia Beach shall:

(a) have adequate personnel on call at all times, each of whom may serve multiple pumping stations, as prescribed by Chesapeake, Newport News, Hampton, Norfolk, and Virginia Beach City Councils, respectively;

(b) be inspected at such intervals and maintain such records of inspection as shall be prescribed by the Board, which records shall be open for review by the Board or its representatives at any reasonable time it shall designate;

(c) have an automatic alarm system installed to give immediate warning of any pump station failure;

(d) have emergency pump connections installed and have portable pumps available to pump sewage to downstream sewer lines during periods of pump station failure; and

(e) not use, except in an emergency as provided by the Board, any overflow lines from such pumping stations, except as provided in subsection (d) herein.

Any sewerage system within the cities of Chesapeake, Newport News, Hampton, Norfolk and Virginia Beach which complies with requirements of this section shall be deemed to meet the requirements for continuous operability as set forth in the regulations of the State Department of Health or the State Water Control Board.

**§62.1-44.19:2.1. Special orders for corrective action for sewerage systems.**

A. The Board is authorized to issue special orders to owners of sewerage systems requiring corrective action to prevent or minimize overflows of sewage from such systems. Such orders may include assessments of administrative penalties for such overflows, but such penalties shall not exceed \$11,000 per violation and the maximum administrative penalty shall not exceed \$157,500. Administrative penalties shall be paid into the state treasury and deposited into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). Such special orders shall be issued only after a public hearing with at least 30 days' notice to the affected owners and the public of the time, place, and purpose thereof. The owners shall be a party to the hearing and every other person who desires to submit comments orally or in writing may do so, subject to the terms of the hearing notice and the applicable provisions of this section. For the purposes of the public hearing, parties have those rights enumerated in § 2.2-4019. For purposes hereof, the term "special order" shall mean an administrative order, and such special orders shall be case decisions, as defined in § 2.2-4001.

B. The Board is authorized to issue special orders, with or without an assessment of administrative penalties prescribed in subsection A, upon the consent of the owner; however, before issuing a special order under this subsection, the Board shall give public notice and reasonable opportunity for comment on the proposed special order and hold a public hearing. The owner and any person who comments on the proposed order shall be given at least 30 days' notice of the time, date, place, and purpose of the hearing. A special order by consent shall not be subject to the requirements of § 2.2-514.

C. Should the Board issue special orders pursuant to this section, the owners shall be entitled to a formal hearing in accordance with § 2.2-4020 with respect to the special order upon filing a petition requesting such a hearing. The formal hearing shall be before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 or, if requested by the owner, before a quorum of the Board. If a formal hearing is held, any person who participated in the public hearing held before the special order was issued shall be entitled to submit comments orally or in writing at the formal hearing. If no formal hearing is held at the owners request, any such person may file a petition for a formal hearing within 30 days after issuance of the special order, and the petition shall be granted if such

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59 *person presents material evidence that was not considered in the issuance of the order. A petition must*  
60 *be filed within 30 days after the date that the Board's action becomes final.*

61 *D. Nothing in this section shall limit the Board's authority under other provisions of this chapter.*

62 § 62.1-44.29. Judicial review.

63 Any owner aggrieved by, or any person who has participated, in person or by submittal of written  
64 comments, in the public comment process related to, a final decision of the Board under §§ 62.1-44.15  
65 (5), 62.1-44.15 (8a), (8b), and (8c), 62.1-44.15:5, 62.1-44.16, 62.1-44.17, 62.1-44.19, ~~62.1-44.19:2.1~~ or  
66 §—62.1-44.25, whether such decision is affirmative or negative, is entitled to judicial review thereof in  
67 accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person  
68 meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the  
69 United States Constitution. A person shall be deemed to meet such standard if (i) such person has  
70 suffered an actual or imminent injury which is an invasion of a legally protected interest and which is  
71 concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the  
72 result of the independent action of some third party not before the court; and (iii) such injury will likely  
73 be redressed by a favorable decision by the court.