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SENATE BILL NO. 423

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 2.2-3705.7, 2.2-4006, 2.2-4007.07, 2.2-4013, 2.2-4014, 2.2-4015, 2.2-4021, 3.1-949.4, 10.1-559.2, 10.1-1184, 10.1-1185, 10.1-1186, 10.1-1186.2, 10.1-1186.3, 10.1-1187.1, 10.1-1187.3, 10.1-1187.6, 10.1-1197.3, 10.1-1301, 10.1-1302, 10.1-1306, 10.1-1307, 10.1-1307.01, 10.1-1307.2, 10.1-1307.3, 10.1-1309, 10.1-1309.1, 10.1-1310, 10.1-1310.1, 10.1-1311, 10.1-1314, 10.1-1314.1, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1400, 10.1-1401, 10.1-1408.5, 10.1-1455, 10.1-2113, 10.1-2131, 15.2-924, 15.2-5101, 21-122.1, 28.2-1205.1, 29.1-213, 29.1-214, 32.1-164, as it is currently effective and as it shall become effective, 45.1-161.6, 45.1-179.9, 45.1-254, 46.2-1178.1, 46.2-1179.1, 46.2-1187.2, 54.1-2300, as it is currently effective and as it shall become effective, 56-586.1, 58.1-3660, 58.1-3664, 62.1-44.3, 62.1-44.4, 62.1-44.5, 62.1-44.9, 62.1-44.13, 62.1-44.14, 62.1-44.15, 62.1-44.15:01, 62.1-44.15:1, 62.1-44.15:1.1, 62.1-44.15:3, 62.1-44.15:4, 62.1-44.15:5.01, 62.1-44.15:5.1, 62.1-44.15:6, 62.1-44.15:20, 62.1-44.15:21, 62.1-44.15:22, 62.1-44.15:23, 62.1-44.16, 62.1-44.17, 62.1-44.17:1.1, 62.1-44.18:2, 62.1-44.18:3, 62.1-44.19, 62.1-44.19:1, 62.1-44.19:3.3, 62.1-44.19:3.4, 62.1-44.19:8, 62.1-44.19:14, 62.1-44.19:15, 62.1-44.19:16, 62.1-44.20, 62.1-44.23, 62.1-44.25, 62.1-44.26, 62.1-44.27, 62.1-44.28, 62.1-44.29, 62.1-44.31, 62.1-44.32, 62.1-44.34:15.1, 62.1-44.34:18, 62.1-44.34:20, 62.1-44.34:23, 62.1-242, 62.1-243, 62.1-244, 62.1-245, 62.1-247, 62.1-248, 62.1-249, 62.1-250, 62.1-251, 62.1-252, 62.1-255, 62.1-256, 62.1-259, 62.1-260, 62.1-261, 62.1-262, 62.1-263, 62.1-264, 62.1-265, 62.1-266, 62.1-267, 62.1-268, 62.1-269, 62.1-270, and 67-401 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 10.1-1185.1, 10.1-1185.2, and 10.1-1185.3, relating to the Department of Environmental Quality.*

Patrons—Puckett; Delegate: Landes

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.7, 2.2-4006, 2.2-4007.07, 2.2-4013, 2.2-4014, 2.2-4015, 2.2-4021, 3.1-949.4, 10.1-559.2, 10.1-1184, 10.1-1185, 10.1-1186, 10.1-1186.2, 10.1-1186.3, 10.1-1187.1, 10.1-1187.3, 10.1-1187.6, 10.1-1197.3, 10.1-1301, 10.1-1302, 10.1-1306, 10.1-1307, 10.1-1307.01, 10.1-1307.2, 10.1-1307.3, 10.1-1309, 10.1-1309.1, 10.1-1310, 10.1-1310.1, 10.1-1311, 10.1-1314, 10.1-1314.1, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1400, 10.1-1401, 10.1-1408.5, 10.1-1455, 10.1-2113, 10.1-2131, 15.2-924, 15.2-5101, 21-122.1, 28.2-1205.1, 29.1-213, 29.1-214, 32.1-164, as it is currently effective and as it shall become effective, 45.1-161.6, 45.1-179.9, 45.1-254, 46.2-1178.1, 46.2-1179.1, 46.2-1187.2, 54.1-2300, as it is currently effective and as it shall become effective, 56-586.1, 58.1-3660, 58.1-3664, 62.1-44.3, 62.1-44.4, 62.1-44.5, 62.1-44.9, 62.1-44.13, 62.1-44.14, 62.1-44.15, 62.1-44.15:01, 62.1-44.15:1, 62.1-44.15:1.1, 62.1-44.15:3, 62.1-44.15:4, 62.1-44.15:5.01, 62.1-44.15:5.1, 62.1-44.15:6, 62.1-44.15:20, 62.1-44.15:21, 62.1-44.15:22, 62.1-44.15:23, 62.1-44.16, 62.1-44.17, 62.1-44.17:1.1, 62.1-44.18:2, 62.1-44.18:3, 62.1-44.19, 62.1-44.19:1, 62.1-44.19:3.3, 62.1-44.19:3.4, 62.1-44.19:8, 62.1-44.19:14, 62.1-44.19:15, 62.1-44.19:16, 62.1-44.20, 62.1-44.23, 62.1-44.25, 62.1-44.26, 62.1-44.27, 62.1-44.28, 62.1-44.29, 62.1-44.31, 62.1-44.32, 62.1-44.34:15.1, 62.1-44.34:18, 62.1-44.34:20, 62.1-44.34:23, 62.1-242, 62.1-243, 62.1-244, 62.1-245, 62.1-247, 62.1-248, 62.1-249, 62.1-250, 62.1-251, 62.1-252, 62.1-255, 62.1-256, 62.1-259, 62.1-260, 62.1-261, 62.1-262, 62.1-263, 62.1-264, 62.1-265, 62.1-266, 62.1-267, 62.1-268, 62.1-269, 62.1-270, and 67-401 of the Code of Virginia are amended and reenacted, and to amend the Code of Virginia by adding sections numbered 10.1-1185.1, 10.1-1185.2, and 10.1-1185.3 as follows:

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no

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59 record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of
60 the fact that it has been attached to or incorporated within any working paper or correspondence.

61 As used in this subdivision:

62 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet
63 Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor
64 has delegated his authority pursuant to § 2.2-104.

65 "Working papers" means those records prepared by or for an above-named public official for his
66 personal or deliberative use.

67 3. Library records that can be used to identify both (i) any library patron who has borrowed material
68 from a library and (ii) the material such patron borrowed.

69 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in
70 awarding contracts for construction or the purchase of goods or services, and records and automated
71 systems prepared for the Department's Bid Analysis and Monitoring Program.

72 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
73 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
74 the political subdivision.

75 6. Records and writings furnished by a member of the General Assembly to a meeting of a standing
76 committee, special committee or subcommittee of his house established solely for the purpose of
77 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
78 formulating advisory opinions to members on standards of conduct, or both.

79 7. Customer account information of a public utility affiliated with a political subdivision of the
80 Commonwealth, including the customer's name and service address, but excluding the amount of utility
81 service provided and the amount of money paid for such utility service.

82 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
83 Authority concerning individuals who have applied for or received loans or other housing assistance or
84 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
85 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
86 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
87 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
88 waiting list for housing assistance programs funded by local governments or by any such authority; or
89 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
90 local government agency concerning persons who have applied for occupancy or who have occupied
91 affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's
92 own information shall not be denied.

93 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if
94 disclosure of them would have a detrimental effect upon the negotiating position of a governing body or
95 on the establishment of the terms, conditions and provisions of the siting agreement.

96 10. Records containing information on the site specific location of rare, threatened, endangered or
97 otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
98 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
99 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
100 This exemption shall not apply to requests from the owner of the land upon which the resource is
101 located.

102 11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data
103 and information of a proprietary nature produced by or for or collected by or for the State Lottery
104 Department relating to matters of a specific lottery game design, development, production, operation,
105 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
106 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
107 advertising, or marketing, where such official records have not been publicly released, published,
108 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
109 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
110 to which it pertains.

111 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
112 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
113 Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or
114 other ownership interest in an entity, where such security or ownership interest is not traded on a
115 governmentally regulated securities exchange, to the extent that: (i) such records contain confidential
116 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
117 system or provided to the retirement system under a promise of confidentiality, of the future value of
118 such ownership interest or the future financial performance of the entity; and (ii) disclosure of such
119 confidential analyses would have an adverse effect on the value of the investment to be acquired, held
120 or disposed of by the retirement system or the Rector and Visitors of the University of Virginia.

Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of

competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30 or of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as "the retirement system") relating to:

a. Internal deliberations of or decisions by the retirement system on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § 53.1-233.

27. (Expires July 1, 2008) Information relating to the breed of the vaccinated animal, and any personal identifying information relating to the animal owner that is not made a part of the animal license application, contained in rabies vaccination certificates provided to local treasurers as required by § 3.1-796.87:1.

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

6. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

7. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

8. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

9. General permits issued by the (a) ~~State Air Pollution Control Board~~ *Director of the Department of Environmental Quality* pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) ~~State Water Control Board~~ *Director of the Department of Environmental Quality* pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1, and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

10. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

11. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

12. Regulations of the Marine Resources Commission.

13. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

14. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy pursuant to subsection B of § 54.1-3307.

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002, or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

§ 2.2-4007.07. State Air Pollution Control Board; variances.

The provisions of §§ 2.2-4007 through 2.2-4007.06 shall not apply to the issuance by the ~~State Air Pollution Control Board~~ *Director of the Department of Environmental Quality* of variances to its regulations ~~adopted by the State Air Pollution Control Board~~.

§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the agency no later than fifteen days following the completion of the public comment period provided for in § 2.2-4007.01. The Governor may recommend amendments or modifications to any regulation that would bring that regulation into conformity with statutory authority or state or federal laws, regulations or judicial decisions.

Not less than fifteen days following the completion of the public comment period provided for in § 2.2-4007.01, the agency may (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the

305 Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the
306 Governor's recommendations for change.

307 B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the
308 Registrar of Regulations for publication as soon as practicable in the Register. All changes to the
309 proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed
310 regulation shall be explained in the final regulation.

311 C. If the Governor finds that one or more changes with substantial impact have been made to the
312 proposed regulation, he may require the agency to provide an additional thirty days to solicit additional
313 public comment on the changes by transmitting notice of the additional public comment period to the
314 agency and to the Registrar within the thirty-day adoption period described in subsection D, and
315 publishing the notice in the Register. The additional public comment period required by the Governor
316 shall begin upon publication of the notice in the Register.

317 D. A thirty-day final adoption period for regulations shall commence upon the publication of the
318 final regulation in the Register. The Governor may review the final regulation during this thirty-day final
319 adoption period and if he objects to any portion or all of a regulation, the Governor may file a formal
320 objection to the regulation, suspend the effective date of the regulation in accordance with subsection B
321 of § 2.2-4014, or both. If the Governor files a formal objection to the regulation, he shall forward his
322 objections to the Registrar and agency prior to the conclusion of the thirty-day final adoption period.
323 The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it
324 or if he fails to suspend the effective date of the regulation in accordance with subsection B of
325 § 2.2-4014 during the thirty-day final adoption period. The Governor's objection, or the suspension of
326 the regulation, or both if applicable, shall be published in the Register.

327 A regulation shall become effective as provided in § 2.2-4015.

328 E. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~ Director of
329 the Department of Environmental Quality of variances to its regulations adopted by the State Air
330 Pollution Control Board.

331 § 2.2-4014. Legislative review of proposed and final regulations.

332 A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of
333 the General Assembly to which matters relating to the content of the regulation are most properly
334 referable or the Joint Commission on Administrative Rules may meet and, during the promulgation or
335 final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or
336 final adopted regulation. The Registrar shall publish any such objection received by him as soon as
337 practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative
338 objection, that agency shall file a response with the Registrar, the objecting legislative committee or the
339 Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within
340 the final adoption period, subdivision A 1 of § 2.2-4015 shall govern.

341 B. In addition to or as an alternative to the provisions of subsection A, the standing committee of both
342 houses of the General Assembly to which matters relating to the content are most properly referable or
343 the Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a
344 final regulation with the Governor's concurrence. The Governor and (i) the applicable standing
345 committee of each house or (ii) the Joint Commission on Administrative Rules may direct, through a
346 statement signed by a majority of their respective members and by the Governor, that the effective date
347 of a portion or all of the final regulation is suspended and shall not take effect until the end of the next
348 regular legislative session. This statement shall be transmitted to the promulgating agency and the
349 Registrar within the 30-day adoption period, and shall be published in the Register.

350 If a bill is passed at the next regular legislative session to nullify a portion but not all of the
351 regulation, then the promulgating agency (i) may promulgate the regulation under the provision of
352 subdivision A 4 a of § 2.2-4006, if it makes no changes to the regulation other than those required by
353 statutory law or (ii) shall follow the provisions of §§ 2.2-4007.01 through 2.2-4007.06, if it wishes to
354 also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended
355 regulation, or to modify the statutory authority for the regulation, is not passed at the next regular
356 legislative session, then the suspended regulation shall become effective at the conclusion of the session,
357 unless the suspended regulation is withdrawn by the agency.

358 C. A regulation shall become effective as provided in § 2.2-4015.

359 D. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~ Director of
360 the Department of Environmental Quality of variances to its regulations adopted by the State Air
361 Pollution Control Board.

362 § 2.2-4015. Effective date of regulation; exception.

363 A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100 et
364 seq.) shall become effective at the conclusion of the thirty-day final adoption period provided for in
365 subsection D of § 2.2-4013, or any other later date specified by the agency, unless:

366 1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the

regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable twenty-one-day extension period provided in § 2.2-4014;

2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;

3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular legislative session; or

4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.

B. Whenever the regulatory process has been suspended for any reason, any action by the agency that either amends the regulation or does not amend the regulation but specifies a new effective date shall be considered a readoption of the regulation for the purposes of appeal. If the regulation is suspended under § 2.2-4007.06, such readoption shall take place after the thirty-day public comment period required by that subsection. Suspension of the regulatory process by the agency may occur simultaneously with the filing of final regulations as provided in subsection B of § 2.2-4013.

When a regulation has been suspended, the agency must set the effective date no earlier than fifteen days from publication of the readoption action and any changes made to the regulation. During that fifteen-day period, if the agency receives requests from at least twenty-five persons for the opportunity to comment on new substantial changes, it shall again suspend the regulation pursuant to § 2.2-4007.06.

C. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~ *Director of the Department of Environmental Quality* of variances to ~~its~~ regulations *adopted by the State Air Pollution Control Board*.

§ 2.2-4021. Timetable for decision; exemptions.

A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a decision on a litigated issue, and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.

B. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 90 days from the date of the informal fact-finding, formal proceeding, or completion of a summary case decision proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) ~~the State Water Control Board or the Department of Environmental Quality~~ to the extent necessary to comply with the federal Clean Water Act; ~~(ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with~~ or the federal Clean Air Act, or ~~(iii)(ii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act~~. An agency shall provide notification to the named party of its decision within five days of the decision.

C. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 30 days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within 30 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) ~~the State Water Control Board or the Department of Environmental Quality~~ to the extent necessary to comply with the federal Clean Water Act; ~~(ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with~~ or the federal Clean Air Act, or ~~(iii)(ii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act~~. An agency shall provide notice to the named party of its decision within five days of the decision.

D. The provisions of subsection B notwithstanding, if the board members or agency personnel who

428 conducted the informal fact-finding, formal proceeding, or summary case decision proceeding are unable
429 to attend to official duties due to sickness, disability, or termination of their official capacity with the
430 agency, then the timeframe provisions of subsection B shall be reset and commence from the date that
431 either new board members or agency personnel are assigned to the matter or a new proceeding is
432 conducted if needed, whichever is later. An agency shall provide notice within five days to the named
433 party of any incapacity of the board members or agency personnel that necessitates a replacement or a
434 new proceeding.

435 § 3.1-949.4. Commissioner to receive enforcement authority for the Stage II Vapor Recovery
436 Programs.

437 A. Upon the request of the Commissioner, the ~~State Air Pollution Control Board~~ *Director of the*
438 *Department of Environmental Quality* may delegate to the Commissioner ~~its~~ *his* authority under Chapter
439 13 (§ 10.1-1300 et seq.) of Title 10.1, to implement and enforce any provisions of ~~its~~ regulations
440 covering the storage and transfer of petroleum liquids. Upon receiving such delegation, the authority to
441 implement and enforce the regulations under Chapter 13 of Title 10.1 shall be vested solely in the
442 Commissioner, notwithstanding any provision of law contained in Title 10.1, except as provided herein.
443 The ~~State Air Pollution Control Board~~ *Director of the Department of Environmental Quality*, in
444 delegating ~~its~~ *his* authority under this section, may make the delegation subject to any conditions ~~it~~ *he*
445 deems appropriate to ensure effective implementation of the regulations according to the policies of the
446 State Air Pollution Control Board.

447 B. In addition to the Commissioner's authority to implement and enforce any provisions of the
448 regulations of the State Air Pollution Control Board covering the storage and transfer of petroleum
449 liquids, the Board of Agriculture and Consumer Services shall have the authority to promulgate such
450 regulations as are reasonably necessary for the administration, monitoring and enforcement of the law
451 relating to the storage and transfer of petroleum liquids. Any violation of the provisions covering the
452 storage and transfer of petroleum liquids shall be deemed to be a violation of this chapter, and the
453 Commissioner may take appropriate enforcement action pursuant to the provisions of this chapter.

454 § 10.1-559.2. Exclusions from article.

455 This article shall not apply to any agricultural activity to which (i) Article 12 (§ 10.1-1181.1 et seq.)
456 of Chapter 11 of this title or (ii) a permit issued ~~by the State Water Control Board~~ *under the State Water*
457 *Control Law (§ 62.1-44.2 et seq.)*, applies.

458 § 10.1-1184. State Air Pollution Control Board, State Water Control Board, and Virginia Waste
459 Management Board continued.

460 The State Air Pollution Control Board, State Water Control Board, and Virginia Waste Management
461 Board are continued and shall promote the environmental quality of the Commonwealth. All policies and
462 regulations adopted or promulgated by the State Air Pollution Control Board, State Water Control
463 Board, Virginia Waste Management Board, and the Council on the Environment and in effect on
464 December 31, 1992, shall continue to be in effect until and unless superseded by new policies or
465 regulations. Representatives of the three Boards shall meet jointly at least twice a year to receive public
466 comment and deliberate about environmental issues of concern to the Commonwealth, *including the*
467 *development and implementation of regulations for multimedia permitting, increased efficiencies for the*
468 *processing of permit applications and information requests, and enhancement of opportunities for*
469 *effective public participation.*

470 § 10.1-1185. Appointment of Director; powers and duties of Director.

471 The Department shall be headed by a Director appointed by the Governor to serve at his pleasure ~~for~~
472 ~~a term coincident with his own.~~ *The Director shall be an experienced administrator with knowledge of*
473 *environmental protection and shall have demonstrated expertise in management and environmental*
474 *science, law, or policy.* The Director of the Department of Environmental Quality shall, under the
475 direction and control of the Governor, exercise such power and perform such duties as are conferred or
476 imposed upon him by law and shall perform such other duties as may be required of him by the
477 Governor and the following Boards: the State Air Pollution Control Board, the State Water Control
478 Board, and the Virginia Waste Management Board. The Director or his designee shall serve as executive
479 officer of the aforementioned Boards.

480 All powers and duties conferred or imposed upon the Executive Director of the Department of Air
481 Pollution Control, the Executive Director of the State Water Control Board, the Administrator of the
482 Council on the Environment, and the Director of the Department of Waste Management are continued
483 and conferred or imposed upon the Director of the Department of Environmental Quality or his
484 designee. Wherever in this title and in the Code of Virginia reference is made to the head of a division,
485 department or agency hereinafter transferred to this Department, it shall mean the Director of the
486 Department of Environmental Quality.

487 § 10.1-1185.1. Public hearings on draft permits; authority of Director.

488 A. *The Director may convene a public hearings or Board meetings for consideration of permits*
489 *issued pursuant to the State Air Pollution Control Law (§ 10.1-1300 et seq.), the Waste Management Act*

(§ 10.1-1400) and State Water Control Law (§ 62.1-44.2 et seq.). For the purposes of this section, the term "Board" shall mean: (i) the State Air Pollution Control Board, with respect to permits pursuant to the State Air Pollution Control Law; (ii) the Virginia Waste Management Board, with respect to permits pursuant to the Waste Management Act; and (iii) the State Water Control Board, with respect to permits pursuant to the State Water Control Law.

B. At any time during the public comment period on a draft permit, any person who has submitted written comments on the draft permit may submit to the Director, in writing, a request for a public hearing on the draft permit. The Director shall convene a public hearing on the draft permit if he determines, based on comments received during the comment period, that: (i) there is substantial public interest in the permit; (ii) there are significant legal or factual issues that are both germane to the draft permit and within the Department's jurisdiction; and (iii) a public hearing could provide information to assist the Department or the Board. No later than 15 days following the close of the public comment period, the Director shall determine whether to convene a public hearing and notify the applicant of his determination. The Director shall not be required to convene a public hearing to consider legal or factual issues addressed by the Department in preparing the draft permit. The Director may, in his discretion, convene a public hearing on the draft permit.

C. The Director shall convene a subsequent meeting before the Board on the draft permit if he finds, based on comments received during the public comment periods, that: (i) there are significant legal or factual issues that are both germane to the draft permit and within the Department's jurisdiction; (ii) such issues are capable of resolution by the exercise of the Director's authority; and (iii) that the Director's ability to address and resolve those issues would be enhanced by the Board's participation and advice. No later than 15 days following the public hearing, the Director shall determine whether to convene a Board meeting and notify the applicant of his determination. The Director shall not be required to convene a Board meeting to consider legal or factual issues addressed by the Department in preparing the draft permit.

§ 10.1-1185.2. Notice required; records.

A. Notice of public hearings shall be published at least 30 days prior to such hearing in at least one newspaper of general circulation in the locality where the permitted activity under consideration is sited or by such other means as the Director may prescribe. Notice for Board meetings shall be provided in accordance with the Freedom of Information Act (§ 2.2-3700 et seq.). The Director shall make a good faith effort to notify persons who participated in prior comment periods that the draft permit is on the agenda of the Board meeting. The agenda shall specify a reasonable amount of time for Department, applicant, and public to comment on the draft permit.

B. Public hearings and Board meetings shall be recorded electronically or by court reporter. The recording or transcript, together with written comments submitted during the public comment period, shall become part of the agency files and be available to the public upon request pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. Public hearings shall be presided over by the Director or his designee. Board meetings shall be presided over by a quorum of the Board. If a quorum is not present, the Board meeting shall be rescheduled. If a quorum of the Board fails to appear at the rescheduled meeting, the Director shall proceed to take final action on the draft permit.

D. Board meetings shall be held so that a final decision is issued within 90 days of the close of the public comment period or from a later date, as agreed to by the named party and the Department.

§ 10.1-1185.3. Hearings before the Board; recommendation to Director.

A. At the close of comment before the Board, the members present at the Board meeting shall confer in open meeting and vote on recommendations for consideration by the Director in rendering his final determination on the permit. Such recommendations shall be based upon verbal and written comments received during the public comment period, any explanation of comments previously received during the public comment period made at the Board meeting, and the agency files. The Director shall consider any recommendation within the statutory jurisdiction of the Board and adopted by majority vote of the Board members present.

B. The Director may incorporate conditions in the permit based upon Board recommendations if he determines that such conditions: (i) are within the statutory authority of the Department; (ii) were not addressed by the Department in preparing the draft permit; (iii) either provide substantial additional protection to the environment, public health, or natural resources or provide substantially the same level of protection in a more effective or efficient manner; (iv) are consistent with the statutory and regulatory program under which the permit is issued; (v) are technologically and economically feasible; and (vi) do not unfairly or unreasonably burden the applicant with costs or delays that would, in the Director's judgment, be disproportionate to the benefits reasonably to be expected from them. The Director shall incorporate conditions in the permit based upon recommendations adopted by the Board if he determines that such conditions are necessary to comply with applicable laws and regulations

551 *administered by the Department.*

552 *C. The Director shall prepare a written record of his final determination on the permit that indicates*
 553 *how he has addressed each Board recommendation. Failure of the Director to prepare a record of*
 554 *decision conforming to the requirements of this section shall not be considered a harmless error should*
 555 *the Director's decision be subject to judicial review pursuant to § 2.2-4026.*

556 § 10.1-1186. General powers of the Director.

557 The Department shall have the following general powers, any of which the Director may delegate as
 558 appropriate:

559 1. Employ such personnel as may be required to carry out the duties of the Department;

560 2. Make and enter into all contracts and agreements necessary or incidental to the performance of its
 561 duties and the execution of its powers under this chapter, including, but not limited to, contracts with
 562 the United States, other states, other state agencies and governmental subdivisions of the
 563 Commonwealth;

564 3. Accept grants from the United States government and agencies and instrumentalities thereof and
 565 any other source. To these ends, the Department shall have the power to comply with such conditions
 566 and execute such agreements as may be necessary, convenient, or desirable;

567 4. Accept and administer services, property, gifts and other funds donated to the Department;

568 5. Implement all regulations as may be adopted by the State Air Pollution Control Board, the State
 569 Water Control Board, and the Virginia Waste Management Board;

570 6. Administer, under the direction of the Boards, funds appropriated to it for environmental programs
 571 and make contracts related thereto;

572 7. Initiate and supervise programs designed to educate citizens on ecology, pollution and its control,
 573 technology and its relationship to environmental problems and their solutions, population and its relation
 574 to environmental problems, and other matters concerning environmental quality;

575 8. Advise and coordinate the responses of state agencies to notices of proceedings by the State Water
 576 Control Board Director to consider certifications of hydropower projects under 33 U.S.C. § 1341;

577 9. Advise interested agencies of the Commonwealth of pending proceedings when the Department of
 578 Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy
 579 Regulatory Commission proceeding or when the Department of Game and Inland Fisheries intervenes in
 580 a Federal Energy Regulatory Commission proceeding to coordinate the provision of information and
 581 testimony for use in the proceedings;

582 10. Notwithstanding any other provision of law and to the extent consistent with federal
 583 requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to
 584 comply with: (i) the provisions of any law administered by the Boards, the Director or the Department,
 585 (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case
 586 decision, as defined in § 2.2-4001, of the Boards or Director. The issuance of a special order shall be
 587 considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to
 588 impose civil penalties in conjunction with issuance of special orders. For purposes of this subdivision,
 589 "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia
 590 Waste Management Board; and

591 11. *Issue, reissue, revoke, terminate, modify, amend, and enforce any permits, general permits,*
 592 *licenses, and certificates, including variances and exemptions thereto, authorized or required by laws*
 593 *and regulations administered or implemented by the Department; and*

594 12. Perform all acts necessary or convenient to carry out the purposes of this chapter.

595 § 10.1-1186.2. Supplemental environmental projects.

596 A. As used in this section, "supplemental environmental project" means an environmentally beneficial
 597 project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

598 B. The State Air Pollution Control Board, the State Water Control Board, the Virginia Waste
 599 Management Board, or the Director acting on behalf of one of these boards or under his own authority
 600 in issuing any administrative order, or any court of competent jurisdiction as provided for under this
 601 Code, may, in its or his discretion and with the consent of the person subject to the order, provide for
 602 such person to undertake one or more supplemental environmental projects. The project shall have a
 603 reasonable geographic nexus to the violation or, if no such project is available, shall advance at least
 604 one of the declared objectives of the environmental law or regulation that is the basis of the enforcement
 605 action. Performance of such projects shall be enforceable in the same manner as any other provision of
 606 the order.

607 C. The following categories of projects may qualify as supplemental environmental projects, provided
 608 the project otherwise meets the requirements of this section: public health, pollution prevention,
 609 pollution reduction, environmental restoration and protection, environmental compliance promotion, and
 610 emergency planning and preparedness. In determining the appropriateness and value of a supplemental
 611 environmental project, the following factors shall be considered by the enforcement authority: net project
 612 costs, benefits to the public or the environment, innovation, impact on minority or low income

populations, multimedia impact, and pollution prevention. The costs of those portions of a supplemental environmental project that are funded by state or federal low-interest loans, contracts or grants shall be deducted from the net project cost in evaluating the project. In each case in which a supplemental environmental project is included as part of a settlement, an explanation of the project with any appropriate supporting documentation shall be included as part of the case file.

D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

E. Any decision whether or not to agree to a supplemental environmental project is within the sole discretion of the ~~applicable board, official~~ Director or court and shall not be subject to appeal.

F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable federal law or any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

§ 10.1-1186.3. Additional powers of Boards; mediation; alternative dispute resolution.

A. The State Air Pollution Control Board, the State Water Control Board and the Virginia Waste Management Board, in their discretion, may employ mediation as defined in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve underlying issues, reach a consensus or compromise on contested issues. An "appropriate case" means any process related to the development of a regulation ~~or the issuance of a permit~~ in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public interest. The Boards shall consider not using a mediation or dispute resolution proceeding if:

1. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

2. The matter involves or may bear upon significant questions of state policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Board;

3. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

4. The matter significantly affects persons or organizations who are not parties to the proceeding;

5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding cannot provide such a record; and

6. The Board must maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution proceeding would interfere with the Board's fulfilling that requirement.

Mediation and alternative dispute resolution as authorized by this section are voluntary procedures which supplement rather than limit other dispute resolution techniques available to the Boards. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only with the consent and participation of the permit applicant and shall be terminated at the request of the permit applicant.

B. The decision to employ mediation or a dispute resolution proceeding is in a Board's sole discretion and is not subject to judicial review.

C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board, but may be considered by a Board in ~~issuing a permit or~~ promulgating a regulation.

D. Each Board shall adopt rules and regulations, in accordance with the Administrative Process Act, for the implementation of this section. Such rules and regulations shall include: (i) standards and procedures for the conduct of mediation and dispute resolution, including an opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the appointment and function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work product or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where a Board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation.

Nothing in this section shall create or alter any right, action or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with applicable federal law or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

§ 10.1-1187.1. Definitions.

"Board or Boards" means the State Air Pollution Control Board, the State Water Control Board, and

674 the Virginia Waste Management Board.

675 "Department" means the Department of Environmental Quality.

676 "Director" means the Director of the Department of Environmental Quality.

677 "Environmental Management System" means a comprehensive, cohesive set of documented policies
678 and procedures adopted by a facility or person and used to establish environmental goals, to meet and
679 maintain those goals, to evaluate environmental performance and to achieve measurable or noticeable
680 improvements in environmental performance, through planning, documented management and operational
681 practices, operational changes, self assessments, and management review. The term shall include, but not
682 be limited to, any such system developed in accordance with the International Standards of Operation
683 14001 standards.

684 "E2" means an environmental enterprise.

685 "E3" means an exemplary environmental enterprise.

686 "E4" means an extraordinary environmental enterprise.

687 "Facility" means a manufacturing, business, agricultural, or governmental site or installation involving
688 one or more contiguous buildings or structures under common ownership or management.

689 "Record of sustained compliance" means that the person or facility (i) has no judgment or conviction
690 entered against it, or against any key personnel of the person or facility or any person with an
691 ownership interest in the facility for a criminal violation of environmental protection laws of the United
692 States, the Commonwealth, or any other state in the previous five years; (ii) has been neither the cause
693 of, nor liable for, more than two significant environmental violations in the previous three years; (iii)
694 has no unresolved notices of violations or potential violations of environmental requirements with the
695 Department or one of the Boards; (iv) is in compliance with the terms of any order or decree, executive
696 compliance agreement, or related enforcement measure issued by the Department, one of the
697 Boards, Director or the U.S. Environmental Protection Agency; and (v) has not demonstrated in any
698 other way an unwillingness or inability to comply with environmental protection requirements.

699 § 10.1-1187.3. Program categories and criteria.

700 A. The Director shall establish different categories of participation and the criteria and benefits for
701 each category. Such categories shall include, but not be limited to: (i) E2 facilities, (ii) E3 facilities, and
702 (iii) E4 facilities.

703 B. In order to participate as an E2 facility, a person or facility shall demonstrate that it (i) is
704 developing an environmental management system or has initiated implementation of an environmental
705 management system, (ii) has a commitment to pollution prevention and a plan to reduce environmental
706 impacts from its operations, and (iii) has a record of sustained compliance with environmental
707 requirements. To apply to become an E2 facility, an applicant shall submit the following information to
708 the Department: (a) a policy statement outlining the applicant's commitment to improving environmental
709 quality, (b) an evaluation of the applicant's environmental impacts, (c) the applicant's objectives and
710 targets for addressing significant environmental impacts, and (d) a description of the applicant's pollution
711 prevention program. A person or facility may participate in this program for up to three years, and may
712 apply to renew its participation at the expiration of each three-year period. Incentives for E2 facilities
713 may include, but are not limited to, the following: public recognition of facility performance and
714 reduced fees.

715 C. In order to participate as an E3 facility, a person or facility shall demonstrate that it has (i) a
716 fully-implemented environmental management system, (ii) a pollution prevention program with
717 documented results, and (iii) a record of sustained compliance with environmental requirements. To
718 apply to become an E3 facility, an applicant shall submit the following information to the Department:
719 (a) a policy statement outlining the applicant's commitment to improving environmental quality; (b) an
720 evaluation of the applicant's actual and potential environmental impacts; (c) the applicant's objectives
721 and targets for addressing significant environmental impacts; (d) a description of the applicant's pollution
722 prevention program; (e) identification of the applicant's environmental legal requirements; (f) a
723 description of the applicant's environmental management system that identifies roles, responsibilities and
724 authorities, reporting and record-keeping, emergency response procedures, staff training, monitoring, and
725 corrective action processes for noncompliance with the environmental management system; (g) voluntary
726 self-assessments; and (h) procedures for internal and external communications. A person or facility may
727 participate in this program for up to three years, and may apply to renew its participation at the
728 expiration of each three-year period. Incentives for E3 facilities may include, but are not limited to, the
729 following: public recognition of facility performance, reduced fees, reduced inspection priority, a single
730 point-of-contact between the facility and the Department, streamlined environmental reporting, reduced
731 monitoring requirements, prioritized permit and permit amendment review, and the ability to implement
732 alternative compliance measures approved by the appropriate Board Director in accordance with
733 § 10.1-1187.6.

734 D. In order to participate as an E4 facility, a person or facility shall meet the criteria for participation
735 as an E3 facility, and shall have (i) implemented and completed at least one full cycle of an

environmental management system as verified by an unrelated third-party qualified to audit environmental management systems and (ii) committed to measures for continuous and sustainable environmental progress and community involvement. To apply to become an E4 facility, an applicant shall submit (a) the information required to apply to become an E3 facility, (b) documentation evidencing implementation and completion of at least one full cycle of an environmental management system and evidencing review and verification by an unrelated third party, and (c) documentation that the applicant has committed to measures for continuous and sustainable environmental progress and community involvement. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E4 facilities may include all of the incentives available to E3 facilities. Any facility or person that has been accepted into the National Performance Track Programs by the U.S. Environmental Protection Agency shall be deemed to be an E4 facility. If acceptance in the Program is revoked or suspended by the U.S. Environmental Protection Agency, participation as an E4 facility shall also be terminated or suspended.

§ 10.1-1187.6. Approval of alternate compliance methods.

A. To the extent consistent with federal law and notwithstanding any other provision of law, the ~~Air Pollution Control Board, the Waste Management Board, and the State Water Control Board~~ Director may grant alternative compliance methods to the regulations adopted pursuant to their authorities, respectively, under §§ 10.1-1308, 10.1-1402, and 62.1-44.15 for persons or facilities that have been accepted by the Department as meeting the criteria for E3 and E4 facilities under § 10.1-1187.3, including but not limited to changes to monitoring and reporting requirements and schedules, streamlined submission requirements for permit renewals, the ability to make certain operational changes without prior approval, and other changes that would not increase a facility's impact on the environment. Such alternative compliance methods may allow alternative methods for achieving compliance with prescribed regulatory standards, provided that the person or facility requesting the alternative compliance method demonstrates that the method will (i) meet the purpose of the applicable regulatory standard, (ii) promote achievement of those purposes through increased reliability, efficiency, or cost effectiveness, and (iii) afford environmental protection equal to or greater than that provided by the applicable regulatory standard. No alternative compliance method shall be approved that would alter an ambient air quality standard, ground water protection standard, or water quality standard and no alternative compliance method shall be approved that would increase the pollutants released to the environment, increase impacts to state waters, or otherwise result in a loss of wetland acreage.

B. Notwithstanding any other provision of law, an alternate compliance method may be approved under this section after at least 30 days' public notice and opportunity for comment, and a determination that the alternative compliance method meets the requirements of this section.

C. Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable federal law or other requirement necessary for the Commonwealth to obtain or retain federal delegation or approval of any regulatory program. Before approving an alternate compliance method affecting any such program, ~~each Board~~ the Director may obtain the approval of the federal agency responsible for such delegation or approval. ~~Any one of the Boards~~ The Director may withdraw approval of the alternate compliance method at any time if any conditions under which the alternate compliance method was originally approved change, or if the recipient has failed to comply with any of the alternative compliance method requirements.

D. Upon approval of the alternative compliance method under this section, the alternative compliance method shall be incorporated into the relevant permits as a minor permit modification with no associated fee. The permits shall also contain any such provisions that shall go into effect in the event that the participant fails to fulfill its obligations under the variance, or is removed from the program for reasons specified by the Director under subsection B of § 10.1-1187.4.

§ 10.1-1197.3. Purposes of Fund; loans to small businesses; administrative costs.

A. Moneys in the Fund shall be used to make loans or to guarantee loans to small businesses for the purchase and installation of environmental pollution control and prevention equipment certified by the Department as meeting the following requirements:

1. The air pollution control equipment is needed by the small business to comply with the federal Clean Air Act (42 U.S.C. § 7401 et seq.); or

2. The pollution control equipment will allow the small business to implement voluntary pollution prevention measures.

Moneys in the Fund may also be used to make loans or to guarantee loans to small businesses for the installation of voluntary agricultural best management practices, as defined in § 58.1-339.3.

B. The Department or its designated agent shall determine the terms and conditions of any loan. All loans shall be evidenced by appropriate security as determined by the Department or its designated agent. The Department, or its agent, may require any documents, instruments, certificates, or other information deemed necessary or convenient in connection with any loan from the Fund.

897 C. A portion of the Fund balance may be used to cover the reasonable and necessary costs of
898 administering the Fund. Unless otherwise authorized by the Governor or his designee, the costs of
899 administering the Fund shall not exceed a base year amount of \$65,000 per year, using fiscal year 2000
900 as the base year, adjusted annually by the Consumer Price Index.

901 D. The Fund shall not be used to make loans to small businesses for the purchase and installation of
902 equipment needed to comply with an enforcement action by the ~~Department, the State Air Pollution~~
903 ~~Control Board, the State Water Control Board, or the Virginia Waste Management Board~~ Director.

904 § 10.1-1301. State Air Pollution Control Board; membership; terms; vacancies.

905 The State Air Pollution Control Board shall be composed of ~~five~~seven members appointed by the
906 Governor for four-year terms. Vacancies other than by expiration of term shall be filled by the Governor
907 by appointment for the unexpired term.

908 § 10.1-1302. Qualifications of members of Board.

909 The members of the Board shall be citizens of the Commonwealth and shall be selected from the
910 Commonwealth at large on the basis of merit without regard to political affiliation. ~~At least a majority~~
911 ~~of members appointed to the Board shall represent the public interest and not derive any significant~~
912 ~~portion of their income from persons subject to permits or enforcement orders of the Board.~~Members
913 *shall, by their education, training, or experience, be knowledgeable of air quality control and*
914 *regulation, and shall be fairly representative of conservation, public health, business, and agriculture.*
915 Notwithstanding any other provision of this section relating to Board membership, the qualifications for
916 Board membership shall not be more strict than those which may be required by federal statute or
917 regulations of the United States Environmental Protection Agency. The provisions of this section shall
918 be in addition to the requirements of the State and Local Government Conflict of Interests Act
919 (§ 2.2-3100 et seq.).

920 § 10.1-1306. Inspections, investigations, etc.

921 The ~~Board~~Director shall make, or cause to be made, such investigations and inspections and do such
922 other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of
923 the appropriations, study grants, funds, or personnel which are available for the purposes of this chapter,
924 including the achievement and maintenance of such levels of air quality as will protect human health,
925 welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and
926 property and which will foster the comfort and convenience of the people of the Commonwealth and
927 their enjoyment of life and property and which will promote the economic and social development of
928 the Commonwealth and facilitate enjoyment of its attractions.

929 § 10.1-1307. Powers of the Director and the Board.

930 A. The Board shall have the power to control and regulate its internal affairs; initiate and supervise
931 research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise
932 statewide programs of air pollution control education; cooperate with and receive money from the
933 federal government or any county or municipal government, and receive money from any other source,
934 whether public or private; develop a comprehensive program for the study, abatement, and control of all
935 sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the
936 United States and all agencies of the Commonwealth, political subdivisions, private industries, and any
937 other affected groups in furtherance of the purposes of this chapter.

938 B. The Board may adopt by regulation emissions standards controlling the release into the
939 atmosphere of air pollutants from motor vehicles, only as provided in Article 22 (§ 46.2-1176 et seq.) of
940 Chapter 10 of Title 46.2.

941 C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, ~~it~~the Director may,
942 in ~~its~~his discretion grant local variances therefrom, if ~~it~~he finds after an investigation and hearing that
943 local conditions warrant. If local variances are permitted, the ~~Board~~Director shall issue an order to this
944 effect. Such order shall be subject to revocation or amendment at any time if the ~~Board~~Director after a
945 hearing determines that the amendment or revocation is warranted. Variances and amendments to
946 variances shall be adopted only after a public hearing has been conducted pursuant to the public
947 advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled
948 hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

949 D. After the Board has adopted the regulations provided for in § 10.1-1308, ~~it~~the Director shall have
950 the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings
951 and enter orders diminishing or abating the causes of air pollution and orders to enforce ~~its~~ regulations
952 pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the
953 enforcement of ~~its~~ orders, regulations, and the abatement and control of air pollution and for the
954 enforcement of penalties.

955 E. The Board in making regulations and *the Director* in approving variances, control programs, or
956 permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider
957 facts and circumstances relevant to the reasonableness of the activity involved and the regulations
958 proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. ~~The Board may designate one of its members, the Director, or a staff assistant to conduct the hearings provided for in this chapter. A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.~~

G. ~~The Board shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality.~~

G. The Director shall issue, reissue, revoke, terminate, modify, amend, and enforce any permits, licenses, and certificates, including variances and exemptions thereto, authorized by the provisions of this chapter. The Director shall adopt and issue any general permit or general permit regulation.

§ 10.1-1307.01. Localities particularly affected.

After June 30, 1994, before ~~promulgating~~*the Board adopts* any regulation under consideration, ~~granting or the Director grants~~ any variance to an existing regulation, or ~~issuing~~*issues* any permit for the construction of a new major source or for a major modification to an existing source, if the Board ~~or Director~~ finds that there are localities particularly affected by the regulation, variance or permit, the Board ~~or Director~~ shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall provide information regarding specific pollutants and the total quantity of each which may be emitted and shall list the type and quantity of any fuels to be used.

2. Mail the notice to the chief elected official and chief administrative officer and the planning district commission for those localities.

Written comments shall be accepted by the Board ~~or Director~~ for at least fifteen days after any hearing on the regulation, variance, or permit, unless the Board votes ~~or the Director determines~~ to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

§ 10.1-1307.2. Powers and duties of the Executive Director.

A. The Executive Director, under the direction and control of the Governor, shall exercise such powers and perform such duties as are conferred or imposed upon him by the law and shall perform such other duties required of him by the Governor and the Board.

B. The Executive Director may be vested with the authority of the Board when it is not in session, subject to such regulations or delegation as may be prescribed by the Board.

~~In no event shall the Executive Director have the authority to adopt or promulgate any regulation.~~

C. In addition to the powers designated elsewhere in this chapter, the Director shall have the following general powers:

1. Supervise and manage the Department;

2. Prepare and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations;

3. Provide investigative and such other services as needed by the Department to enforce applicable laws and regulations;

4. Provide for the administrative functions and services of the Department;

5. Provide such office facilities as will allow the Department to carry out its duties; and

6. Assist the citizens (including corporate citizens) of the Commonwealth by providing guidelines, time tables, suggestions and in general being helpful to applicants seeking state and federal air pollution control permits.

§ 10.1-1307.3. Director to enforce laws.

A. The Executive Director or his duly authorized representative shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations ~~and orders of the Board as are conferred upon him by the Board~~*adopted hereunder*;

2. Investigate any violations of this chapter and regulations ~~and orders of the Board~~;

3. Require that air pollution records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulations ~~and orders of the Board~~;

4. Upon presenting appropriate credentials to the owner, operator, or agent in charge:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the Director or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Director shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection; and

5. Temporarily suspend the enforcement of any regulation or permit requirement applicable to any part of an electrical generation and transmission system, whether owned or contracted for, when a public electric utility providing power within the Commonwealth so requests and has suffered a force majeure event as defined in subdivision 7 of § 59.1-21.18:2.

B. The Executive Director or his duly authorized representative may pursue enforcement action for a violation of opacity requirements or limits based on (i) visual observations conducted pursuant to methods approved by the U.S. Environmental Protection Agency, (ii) data from certified continuous opacity monitors, or (iii) other methods approved by the U.S. Environmental Protection Agency.

§ 10.1-1309. Issuance of special orders; civil penalties.

A. The ~~Board~~ Director shall have the power to issue special orders to:

(i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist from such pollution;

(ii) owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to and approved by the ~~Board~~ Director, to construct such facilities in accordance with or otherwise comply with, such approved plans;

(iii) owners who have violated or failed to comply with the terms and provisions of any ~~Board~~ order or directive to comply with such terms and provisions;

(iv) owners who have contravened duly adopted and promulgated air quality standards and policies, to cease such contravention and to comply with air quality standards and policies;

(v) require any owner to comply with the provisions of this chapter and any ~~Board~~ decision; and

(vi) require any person to pay civil penalties of up to \$32,500 for each violation, not to exceed \$100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the ~~Board~~ or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subsection B. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The ~~Board~~ Director shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination.

B. Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C below. Should the ~~Board~~ Director find that any such owner is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a reasonable attempt to give notice, ~~it~~he shall declare a state of emergency and may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the ~~Board~~ Director finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, ~~it~~he may proceed in accordance with § 10.1-1316 or 10.1-1320.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal

delivery by an agent of the ~~Board~~Director, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 10.1-1307 shall limit the ~~Board's~~Director's authority to proceed against such owner directly under § 10.1-1316 or 10.1-1320 without the prior issuance of an order, special or otherwise.

§ 10.1-1309.1. Special orders; penalties.

The ~~Board~~Director is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the ~~Board~~Director a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the ~~Board~~Director may deem appropriate. The ~~Board~~Director may require that such plan and instruments be updated as appropriate. The ~~Board~~Director shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1310. Decision of Director pursuant to hearing.

Any decision by the ~~Board~~Director rendered pursuant to hearings under § 10.1-1309 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the ~~Board's~~Director's decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10.1-1310.1. Notification of local government.

Upon determining that there has been a violation of this chapter or any regulation promulgated ~~under this chapter~~ or order of the ~~Board~~ adopted hereunder, and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

§ 10.1-1311. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Upon a determination of the amount ~~by~~based upon the regulations adopted by the Board, the ~~Board~~Director shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal

enforcement proceedings brought under other provisions of this chapter.

§ 10.1-1314. Owners to furnish plans, specifications and information.

Every owner which the ~~Board~~Director has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the ~~Board~~Director furnish such plans, specifications and information as may be required by the ~~Board~~Director in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

§ 10.1-1314.1. Protection of trade secrets.

Any information, except emissions data, reported to or otherwise obtained by the Director, the Board, or the agents or employees of either which contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this chapter or the federal Clean Air Act or regulations and orders of the ~~Board~~ hereunder. It shall be the duty of each owner to notify the Director or his representatives of the existence of trade secrets when he desires the protection provided herein.

§ 10.1-1315. Right of entry.

Whenever it is necessary for the purposes of this chapter, the ~~Board~~Department or any member, agent or employee thereof, when duly authorized by the ~~Board~~Director, may at reasonable times enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations.

§ 10.1-1316. Enforcement and civil penalties.

A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any ~~Board~~ regulation or order *hereunder*, or any permit condition may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under subsection A, any owner violating or failing, neglecting or refusing to obey any ~~Board~~ regulation or order *hereunder*, any provision of this chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to exceed \$32,500 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any ~~Board~~ regulation or order, or any provision of this chapter, *any regulation or order adopted or issued hereunder*, or any permit condition, the ~~Board~~Director may provide, in any order issued by the ~~Board~~Director against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

D. The ~~Board~~Director shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

§ 10.1-1318. Appeal from decision of Director.

A. Any owner aggrieved by a final decision of the ~~Board~~Director under § 10.1-1309, § 10.1-1322 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the ~~Board~~Director under § 10.1-1322 and who has exhausted all available administrative remedies for review of the ~~Board's~~Director's decision, shall be entitled to judicial review of the ~~Board's~~Director's decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial

review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the ~~Board~~ Director and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.

Any owner knowingly violating any provision of this chapter, ~~Board~~ any regulation or order *hereunder*, or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than \$10,000 for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

§ 10.1-1320.1. Duty of attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this chapter or any regulation or order of the ~~Board~~, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

§ 10.1-1322. Permits.

A. Pursuant to regulations adopted by the ~~Board~~, permits may *Permits authorized under this chapter* shall be issued, amended, revoked or terminated and reissued by the ~~Department~~ Director and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the ~~Board~~ under the provisions of this chapter.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the ~~Board's~~ operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of \$25 per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The ~~Board~~ Director shall also collect permit application fee amounts not to exceed \$30,000 from applicants for a permit for a new major stationary source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the ~~Board~~ Director, or any new permit program required by the Code of Virginia.

1166 H. The permit program fee regulations promulgated pursuant to this section shall not become
1167 effective until July 1, 1993.

1168 I. [Expired.]

1169 § 10.1-1322.4. Permit modifications for alternative fuels or raw materials.

1170 Unless required by the federal government, no additional permit or permit modifications shall be
1171 required by the Board, for the use, by any source, of an alternative fuel or raw material, if the owner
1172 demonstrates to the Board that as a result of trial burns at their facility or other facilities or other
1173 sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are
1174 decreased.

1175 § 10.1-1400. Definitions.

1176 As used in this chapter unless the context requires a different meaning:

1177 "Applicant" means any and all persons seeking or holding a permit required under this chapter.

1178 "Board" means the Virginia Waste Management Board.

1179 "Composting" means the manipulation of the natural aerobic process of decomposition of organic
1180 materials to increase the rate of decomposition.

1181 "Department" means the Department of Environmental Quality.

1182 "Director" means the Director of the Department of Environmental Quality.

1183 "Disclosure statement" means a sworn statement or affirmation, in such form as may be required by
1184 the Director, which includes:

1185 1. The full name, business address, and social security number of all key personnel;

1186 2. The full name and business address of any entity, other than a natural person, that collects,
1187 transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds
1188 an equity interest of five percent or more;

1189 3. A description of the business experience of all key personnel listed in the disclosure statement;

1190 4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or
1191 disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10
1192 years;

1193 5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether
1194 by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any
1195 sort by any state, federal or local authority, within the past 10 years, which are pending or have
1196 concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or
1197 criminal violation of any law, regulation or requirement relating to the collection, transportation,
1198 treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized
1199 list of all convictions within 10 years of key personnel of any of the following crimes punishable as
1200 felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other
1201 jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary;
1202 theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of
1203 securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or
1204 transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the
1205 Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; or violation of antitrust
1206 laws;

1207 6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the
1208 applicant or have issued any environmental permit or license to the applicant within the past 10 years, in
1209 connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or
1210 hazardous waste;

1211 7. Any other information about the applicant and the key personnel that the Director may require that
1212 reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and
1213 competently operate a solid waste management facility in Virginia; and

1214 8. The full name and business address of any member of the local governing body or planning
1215 commission in which the solid waste management facility is located or proposed to be located, who
1216 holds an equity interest in the facility.

1217 "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid
1218 waste into or on any land or water so that such solid waste or any constituent thereof may enter the
1219 environment or be emitted into the air or discharged into any waters, including ground waters.

1220 "Equity" includes both legal and equitable interests.

1221 "Federal acts" means any act of Congress providing for waste management and regulations
1222 promulgated thereunder.

1223 "Hazardous material" means a substance or material in a form or quantity which may pose an
1224 unreasonable risk to health, safety or property when transported, and which the Secretary of
1225 Transportation of the United States has so designated by regulation or order.

1226 "Hazardous substance" means a substance listed under United States Public Law 96-510, entitled the
1227 Comprehensive Environmental Response Compensation and Liability Act.

"Hazardous waste" means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hazardous waste generation" means the act or process of producing hazardous waste.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would be classified as a hazardous waste, including but not limited to, nickel, cadmium, mercuric oxide, manganese, zinc-carbon or lead batteries; solvent-based paint, paint thinner, paint strippers, or other paint solvents; any product containing trichloroethylene, toxic art supplies, used motor oil and unusable gasoline or kerosene, fluorescent or high intensity light bulbs, ammunition, fireworks, banned pesticides, or restricted-use pesticides as defined in § 3.1-249.27. All empty household product containers and any household products in legal distribution, storage or use shall not be considered household hazardous waste.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the Director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Securities Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage of such hazardous waste.

"Mixed radioactive waste" means radioactive waste that contains a substance which renders the mixture a hazardous waste.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

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

"Radioactive waste" or "nuclear waste" includes:

1. "Low-level radioactive waste" material that:

a. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e (2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014 (e) (2)); and

b. The Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste; or

2. "High-level radioactive waste" which means:

a. The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

b. Other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation.

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and paper which are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption and utilization of recovered resources.

- 1289 "Resource recovery" means the recovery of material or energy from solid waste.
- 1290 "Resource recovery system" means a solid waste management system which provides for collection,
1291 separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues.
- 1292 "Sanitary landfill" means a disposal facility for solid waste so located, designed and operated that it
1293 does not pose a substantial present or potential hazard to human health or the environment, including
1294 pollution of air, land, surface water or ground water.
- 1295 "Sludge" means any solid, semisolid or liquid wastes with similar characteristics and effects
1296 generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply
1297 treatment plant, air pollution control facility or any other waste producing facility.
- 1298 "Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid,
1299 semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural
1300 operations, or community activities but does not include (i) solid or dissolved material in domestic
1301 sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are
1302 sources subject to a permit from the ~~State Water Control Board~~ Director, or (iii) source, special nuclear,
1303 or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.
- 1304 "Solid waste management facility" means a site used for planned treating, long term storage, or
1305 disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.
- 1306 "Transport" or "transportation" means any movement of property and any packing, loading, unloading
1307 or storage incidental thereto.
- 1308 "Treatment" means any method, technique or process, including incineration or neutralization,
1309 designed to change the physical, chemical or biological character or composition of any waste to
1310 neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or
1311 storage or reduced in volume.
- 1312 "Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing
1313 activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub
1314 and tree prunings, bark, limbs, roots, and stumps.
- 1315 "Waste" means any solid, hazardous or radioactive waste as defined in this section.
- 1316 "Waste management" means the collection, source separation, storage, transportation, transfer,
1317 processing, treatment and disposal of waste or resource recovery.
- 1318 "Yard waste" means decomposable waste materials generated by yard and lawn care and includes
1319 leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include
1320 roots or stumps that exceed six inches in diameter.
- 1321 § 10.1-1401. Virginia Waste Management Board continued.
- 1322 A. The Virginia Waste Management Board is ~~continued~~ and shall consist of seven ~~Virginia~~
1323 ~~residents~~ members appointed by the Governor for *terms of four years. Members may be appointed to*
1324 *additional terms. The members of the Board shall be citizens of the Commonwealth and shall be*
1325 *selected from the Commonwealth at large on the basis of merit without regard to political affiliation.*
1326 *Members shall, by their education, training, or experience, be knowledgeable of waste management and*
1327 *shall be fairly representative of agriculture, conservation, industry, and public health.* Notwithstanding
1328 any other provision of this section relating to Board membership, the qualifications for Board
1329 membership shall not be more strict than those which may be required by federal statute or regulations
1330 of the United States Environmental Protection Agency. ~~Upon initial appointment, three members shall be~~
1331 ~~appointed for four-year terms, two for three-year terms, and two for two-year terms. Thereafter, all~~
1332 ~~members shall be appointed for terms of four years each.~~ Vacancies occurring other than by expiration
1333 of a term shall be filled by the Governor for the unexpired portion of the term.
- 1334 B. The Board shall adopt rules and procedures for the conduct of its business.
- 1335 C. The Board shall elect a chairman from among its members.
- 1336 D. A quorum shall consist of four members. The decision of a majority of those present and voting
1337 shall constitute a decision of the Board; however, a vote of the majority of the Board membership is
1338 required to constitute a final decision on certification of site approval. Meetings may be held at any time
1339 or place determined by the Board or upon call of the chairman or upon written request of any two
1340 members. All members shall be notified of the time and place of any meeting at least five days in
1341 advance of the meeting.
- 1342 § 10.1-1408.5. Special provisions regarding wetlands.
- 1343 A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the
1344 expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this
1345 subsection shall not apply to subsection B or the (i) expansion of an existing municipal solid waste
1346 landfill located in the City of Danville or the City of Suffolk when the owner or operator of the landfill
1347 is an authority created pursuant to § 15.2-5102 that has applied for a permit under § 404 of the federal
1348 Clean Water Act prior to January 1, 1989, and the owner or operator has received a permit under § 404
1349 of the federal Clean Water Act and the Virginia Water Resources and Wetlands Protection Program,
1350 Article 2.2 (§ 62.1-44.15:20 et seq.) of Chapter 3.1 of Title 62.1, or (ii) construction of a new municipal

solid waste landfill in Mecklenburg County and provided that the municipal solid waste landfills covered under clauses (i) and (ii) have complied with all other applicable federal and state environmental laws and regulations. It is expressly understood that while the provisions of this section provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the project should receive the necessary environmental and regulatory permits to proceed. For the purposes of this section, the term "expansion of a municipal solid waste landfill" shall include the siting and construction of new cells or the expansion of existing cells at the same location.

B. The Director may issue a solid waste permit for the expansion of a municipal solid waste landfill located in a wetland only if the following conditions are met: (i) the proposed landfill site is at least 100 feet from any surface water body and at least one mile from any tidal wetland; (ii) the Director determines, based upon the existing condition of the wetland system, including, but not limited to, sedimentation, toxicity, acidification, nitrification, vegetation, and proximity to existing permitted waste disposal areas, roads or other structures, that the construction or restoration of a wetland system in another location in accordance with a Virginia Water Protection Permit ~~approved by the State Water Control Board~~ would provide higher quality wetlands; and (iii) the permit requires a minimum two-to-one wetlands mitigation ratio. This subsection shall not apply to the exemptions provided in clauses (i) and (ii) of subsection A.

C. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is within a mile of such a wetland, unless the Director determines that less frequent monitoring is necessary. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the Director. All results shall be reported to the Department.

D. This section shall not apply to landfills which impact less than two acres of nontidal wetlands.

E. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

F. There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to wetlands, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.

§ 10.1-1455. Penalties and enforcement.

A. Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation ~~or order~~ of the Board *adopted hereunder* shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than \$32,500 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

B. In addition to the penalties provided above, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste without a permit or in violation of a permit; or who knowingly makes any false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than \$32,500 for each violation, either or both. The provisions of this subsection shall be deemed to constitute a lesser included offense of the violation set forth under subsection I.

Each day of violation of each requirement shall constitute a separate offense.

C. The ~~Board~~ Director is authorized to issue orders to require any person to comply with the provisions of any law administered by the Board, the Director or the Department, any condition of a permit or certification, or any regulations promulgated by the Board or to comply with any case decision, as defined in § 2.2-4001, of the ~~Board or~~ Director. Any such order shall be issued only after a hearing in accordance with § 2.2-4020 with at least 30 days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 10.1-1402.

D. Any person willfully violating or refusing, failing or neglecting to comply with any regulation ~~or order~~ of the Board ~~or~~ , *order of* the Director, any condition of a permit or certification or any provision

of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

Any person violating or failing, neglecting, or refusing to obey any lawful regulation ~~or order~~ of the Board or *order of* the Director, any condition of a permit or certification or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the Board or the Director to obey such regulation, permit, certification, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$32,500 for each violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation ~~or order~~ of the Board or *order of* the Director ~~adopted or issued hereunder~~, any condition of a permit or any provision of this chapter, the ~~Board~~*Director* may provide, in an order issued by the ~~Board~~*Director* against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

G. In addition to all other available remedies, the ~~Board~~*Director* may issue administrative orders for the violation of (i) any law or regulation administered by the ~~Board~~*Director*; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the ~~Board~~*Director*. Issuance of an administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued pursuant to this subsection may include civil penalties of up to \$32,500 per violation not to exceed \$100,000 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. The ~~Board~~*Director* may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the ~~Board~~ or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The ~~Board~~*Director* shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or mailed by certified mail to the last known address of such persons. Should the ~~Board~~*Director* find that any person is adversely affecting the public health, safety or welfare, or the environment, the ~~Board~~*Director* shall, after a reasonable attempt to give notice, issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the emergency administrative order. If the ~~Board~~*Director* finds that a person who has been issued an administrative order or an emergency administrative order is not complying with the order's terms, the ~~Board~~*Director* may utilize the enforcement and penalty provisions of this article to secure compliance.

H. In addition to all other available remedies, the Department and generators of recycling residues

shall have standing to seek enforcement by injunction of conditions which are specified by applicants in order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

I. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

J. Criminal prosecutions under this chapter shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

K. The ~~Board~~Department shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the ~~Board~~Director under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

L. The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

§ 10.1-2113. Effect on other governmental authority.

The authorities granted herein are supplemental to other state, regional and local governmental authority. No authority granted to a local government by this chapter shall affect in any way the authority of the ~~State Water Control Board~~Director of the Department of Environmental Quality to regulate industrial or sewage discharges under Articles 3 (§ 62.1-44.16 et seq.) and 4 (§ 62.1-44.18 et seq.) of the State Water Control Law (§ 62.1-44.2 et seq.). No authority granted to a local government by this chapter shall limit in any way any other planning, zoning, or subdivision authority of that local government.

§ 10.1-2131. Point source pollution funding; conditions for approval.

A. The Department of Environmental Quality shall be the lead state agency for determining the appropriateness of any grant related to point source pollution to be made from the Fund to restore, protect or improve state water quality.

B. The Director of the Department of Environmental Quality shall, subject to available funds and in coordination with the Director of the Department of Conservation and Recreation, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The Director of the Department of Environmental Quality shall enter into grant agreements with all facilities designated as significant dischargers or eligible nonsignificant dischargers that apply for grants; however, all such grant agreements shall contain provisions that payments thereunder are subject to the availability of funds.

C. Notwithstanding the priority provisions of § 10.1-2129, the Director of the Department of Environmental Quality shall not authorize the distribution of grants from the Fund for purposes other than financing the cost of design and installation of nutrient removal technology at publicly owned treatment works until such time as all tributary strategy plans are developed and implemented unless he finds that there exists in the Fund sufficient funds for substantial and continuing progress in implementation of the tributary strategy plans. In addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include: (i) numerical technology-based effluent concentration limitations on nutrient discharges to state waters based upon the technology installed by the facility; (ii) enforceable provisions related to the maintenance of the numerical concentrations that will allow for exceedences of 0.8 mg/L for total nitrogen or no more than 10 percent, whichever is greater, for exceedences of 0.1 mg/L for total phosphorus or no more than 10%, and for exceedences caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking and revolving loan distribution criteria. If, pursuant to § 10.1-1187.6, the ~~State Water Control Board~~ Director of the Department of Environmental Quality approves an alternative compliance method to technology-based concentration limitations in Virginia Pollutant Discharge Elimination System permits, the concentration limitations of the grant agreement shall be suspended subject to the terms of such approval. The cost of the design and installation of nutrient removal technology at publicly owned treatment works meeting the nutrient reduction goal in an applicable tributary strategy plan or an applicable regulatory requirement and

1535 incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund
1536 provided the grant is made pursuant to an executed agreement consistent with the provisions of this
1537 chapter.

1538 Subsequent to the implementation of the tributary strategy plans, the Director may authorize
1539 disbursements from the Fund for any water quality restoration, protection and improvements related to
1540 point source pollution that are clearly demonstrated as likely to achieve measurable and specific water
1541 quality improvements, including, but not limited to, cost effective technologies to reduce nutrient loads.
1542 Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize
1543 grants, including grants to institutions of higher education, for technical assistance related to nutrient
1544 reduction.

1545 D. The grant percentage provided for financing the costs of the design and installation of nutrient
1546 removal technology at publicly owned treatment works shall be based upon the financial need of the
1547 community as determined by comparing the annual sewer charges expended within the service area to
1548 the reasonable sewer cost established for the community.

1549 E. Grants shall be awarded in the following manner:

1550 1. In communities for which the ratio of annual sewer charges to reasonable sewer cost is less than
1551 0.30, the Director of the Department of Environmental Quality shall authorize grants in the amount of
1552 35 percent of the costs of the design and installation of nutrient removal technology;

1553 2. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or
1554 greater than 0.30 and less than 0.50, the Director shall authorize grants in the amount of 45 percent of
1555 the costs of the design and installation of nutrient removal technology;

1556 3. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or
1557 greater than 0.50 and less than 0.80, the Director shall authorize grants in the amount of 60 percent of
1558 the costs of design and installation of nutrient removal technology; and

1559 4. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or
1560 greater than 0.80, the Director shall authorize grants in the amount of 75 percent of the costs of the
1561 design and installation of nutrient removal technology.

1562 § 15.2-924. Water supply emergency ordinances.

1563 A. Whenever the governing body of any locality finds that a water supply emergency exists or is
1564 reasonably likely to occur if water conservation measures are not taken, it may adopt an ordinance
1565 restricting the use of water by the citizens of such locality for the duration of such emergency or for a
1566 period of time necessary to prevent the occurrence of a water supply emergency. However, such
1567 ordinance shall apply only to water supplied by a locality, authority, or company distributing water for a
1568 fee or charge. Such ordinance may include appropriate penalties designed to prevent excessive use of
1569 water, including, but not limited to, a surcharge on excessive amounts used.

1570 B. After such an emergency has been declared in any locality, any owner of a water supply system
1571 serving that locality may apply to the ~~State Water Control Board~~ *Director of the Department of*
1572 *Environmental Quality* for assistance. If the ~~State Water Control Board~~ *Director of the Department of*
1573 *Environmental Quality* confirms the existence of an emergency, and finds that such owner and such
1574 locality have exhausted available means to relieve the emergency and that the owner and locality are
1575 applying all feasible water conservation measures, and in addition finds that there is water available in
1576 neighboring localities in excess of the reasonable needs of such localities, and that there exists between
1577 such neighboring localities interconnections for the transmission of water, the ~~Board~~ *Director* shall so
1578 inform the Governor. The Governor, if requested jointly by the locality and the owner of the systems
1579 supplying the locality, may then appoint a committee consisting of one representative of the locality
1580 declaring the emergency, one representative of the system supplying the locality under emergency, and
1581 those two representatives shall choose a third representative and failing to choose such third
1582 representative within seven days he shall be selected by the Governor. The committee shall have the
1583 duty and authority to allocate the water available in such localities for the period of the emergency,
1584 provided that the period of the emergency shall not exceed that determined by the locality declaring the
1585 emergency or the ~~State Water Control Board~~ *Director of the Department of Environmental Quality*
1586 whichever period termination is earlier, so that the best water supply possible will be provided to all
1587 water users during the emergency as previously described. Nothing in this section shall be construed as
1588 requiring the construction of pipeline interconnections between any locality or any water supply system.

1589 C. Any water taken from one water supplier for the benefit of another shall be paid for by using the
1590 established rate schedule of the supplier for treated water. Raw water shall be furnished at rates which
1591 shall reflect all costs to the supplying locality, including, but not limited to, capital investment costs.
1592 Should there be imposed upon the supplier any additional obligation, water production costs or other
1593 capital or operating expenditures beyond those normal to the suppliers' system, then the cost of same
1594 shall be chargeable to the receiving locality by single payment or by incorporation in a special rate
1595 structure, all of the same as shall be reasonable.

1596 D. Nothing contained in this section shall authorize any locality to regulate the use of water taken

from a river or any flowing stream when such water is used for industrial purposes and the approximate same quantity of water is returned to such river or stream after such industrial usage.

§ 15.2-5101. Definitions.

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

"Authority" means an authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152 et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost," as applied to a stormwater control system or a water or waste system, includes the purchase price of the system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority; the cost of improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; any deposit to any bond interest and principal reserve account, start-up costs and reserves and expenditures for operating capital; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement, or construction; administrative expenses and such other expenses as may be necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or construction of any such system and the placing of the system in operation by the authority. Any obligation or expense incurred by an authority in connection with any of the foregoing items of cost and any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system is a part of the cost of such system.

"Cost of improvements" means the cost of constructing improvements and includes the cost of all labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired which are deemed necessary for such construction; interest during any period of disuse during such construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal expenses, plans, specifications; and such other expenses as may be necessary or incident to such construction.

"Federal agency" means the United States of America or any department, agency, instrumentality, or bureau thereof.

"Improvements" means such repairs, replacements, additions, extensions and betterments of and to a stormwater control system or a water or waste system as an authority deems necessary to place or maintain the system in proper condition for the safe, efficient and economical operation thereof or to provide service in areas not currently receiving such service.

"Owner" includes persons, federal agencies, and units of the Commonwealth having any title or interest in any stormwater control system or a water or waste system, or the services or facilities to be rendered thereby.

"Political subdivision" means a locality or any institution or commission of the Commonwealth of Virginia.

"Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the ~~State Water Control Board~~ *Department of Environmental Quality*, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954 (42 U.S.C. § 20011, et seq.), as amended.

"Refuse collection and disposal system" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and equipment for use in connection therewith.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water and household and industrial wastes as may be present.

"Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of

1658 sewage, industrial waste or other wastes.

1659 "Sewer system" or "sewage system" means pipelines or conduits, pumping stations, and force mains,
1660 and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage,
1661 industrial wastes or other wastes to a plant of ultimate disposal.

1662 "Stormwater control system" means a structural system of any type that is designed to manage the
1663 runoff from land development projects or natural systems designated for such purposes, including,
1664 without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating
1665 stations, and other plants, structures, and real and personal property used for support of the system.

1666 "Unit" means any department, institution or commission of the Commonwealth; any public corporate
1667 instrumentality thereof; any district; or any locality.

1668 "Water or waste system" means any water system, sewer system, sewage disposal system, or refuse
1669 collection and disposal system, or any combination of such systems. "Water system" means all plants,
1670 systems, facilities or properties used or useful or having the present capacity for future use in connection
1671 with the supply or distribution of water, or facilities incident thereto, and any integral part thereof,
1672 including water supply systems, water distribution systems, dams and facilities for the generation or
1673 transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations,
1674 standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances,
1675 and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient
1676 by the authority for the operation thereof but not including dams or facilities for the generation or
1677 transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used
1678 or useful or having the present capacity for future use in connection with the supply or distribution of
1679 water.

1680 § 21-122.1. Bonds for special purpose; no election required.

1681 The governing body of any county in which a sanitary district has been or may be created by general
1682 or special law shall have the power to issue bonds to satisfy improvements to water or sewerage systems
1683 mandated by the State Water Control Board, pursuant to the Federal Water Pollution Control Act, as
1684 amended (P.L. 92-500).

1685 The principal and interest on bonds issued under this section shall be paid by the governing body
1686 exclusively from revenues and receipts from the water or sewerage system which is to be improved.

1687 For the purposes of this section, the term "mandated" shall also mean any agreement between a
1688 governing body and the ~~State Water Control Board~~ *Director of the Department of Environmental Quality*
1689 to come into compliance with the requirements of the State Water Control Law.

1690 Issuance of such bonds shall be subject to the conditions or limitations of this article; however, no
1691 bond referendum shall be required for bonds to be issued pursuant to this section. The sections of this
1692 article pertaining to election requirements and procedures shall not be applicable where bonds are to be
1693 issued for the purposes set forth herein. In addition, the provisions of §§ 21-137.2 and 21-138,
1694 authorizing an annual tax to be levied upon all the property in the district in order to pay the principal
1695 and interest due on the bonds, shall not be applicable to bonds issued under this section.

1696 All bonds issued under the provisions of this section shall contain a statement on their face
1697 substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit
1698 of any county, city, town or other subdivision of the Commonwealth are pledged to the payment of the
1699 principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this
1700 section shall not directly or indirectly or contingently obligate the Commonwealth or any county, city,
1701 town or other subdivision of the Commonwealth to levy any taxes whatever therefor or to make any
1702 appropriation for their payment except from the funds pledged under the provisions of this section.

1703 § 28.2-1205.1. Coordinated review of water resources projects.

1704 A. Applications for water resources projects that require a Virginia Marine Resources permit and an
1705 individual Virginia Water Protection Permit under § 62.1-44.15:5 shall be submitted and processed
1706 through a joint application and review process.

1707 B. The Commissioner and the Director of the Department of Environmental Quality, in consultation
1708 with the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the
1709 Department of Historic Resources, the Department of Health, the Department of Conservation and
1710 Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or
1711 interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of
1712 projects requiring both permits.

1713 C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the
1714 initial application for the project shall be advertised simultaneously by the Commission and the
1715 Department of Environmental Quality; (ii) project reviews shall be completed by all state agencies that
1716 have been asked to review and provide comments, within 45 days of project notification by the
1717 Commission and the Department of Environmental Quality; (iii) the Commission and the ~~State Water~~
1718 ~~Control Board~~ *Department of Environmental Quality* shall coordinate permit issuance and, to the extent
1719 practicable, shall take action on the permit application no later than one year after the agencies have

received complete applications; (iv) to the extent practicable, the Commission and the ~~State Water Control Board~~*Department of Environmental Quality* shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Commission and the ~~State Water Control Board~~*Department of Environmental Quality* shall provide each other with notification of its action and any and all supporting information, including any background materials or exhibits used in the application.

§ 29.1-213. Taking samples of water believed to be polluted.

Any conservation police officer appointed under the provisions of this title may, and shall when requested by a member of the governing body of a county, city or town, take samples of water from any stream in this Commonwealth when he has reason to believe that the water may be polluted. Any conservation police officer collecting any water sample shall take the sample in a clean container, seal it, and send it to the ~~State Water Control Board~~*Department of Environmental Quality*. With the sample, the conservation police officer shall enclose a signed statement showing in reasonable detail the time and place at which the sample was taken. The officer shall keep the original of the statement and send the copy with the sample.

§ 29.1-214. Duties of the Department of Environmental Quality with respect to water samples.

Upon the receipt of any water sample sent under § 29.1-213, the ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall have a chemical analysis of the sample made by a chemist employed by the ~~State Water Control Board~~*Department of Environmental Quality* or retained especially for that purpose. If the results of the analysis show that the sample of water was polluted, the ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall initiate further studies and analyses to determine the nature, extent and most effective measures of control of the pollution.

The ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall then proceed as provided in Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

§ 32.1-164. (Effective until July 1, 2009) Powers and duties of Board; regulations; fees; authorized onsite soil evaluators; letters in lieu of permits; inspections; civil penalties.

A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems, and treatment works as they affect the public health and welfare. In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the ~~State Water Control Board~~*Director of the Department of Environmental Quality*, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the ~~State Water Control Board~~*Director of the Department of Environmental Quality*.

In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall require and the Department shall conduct regular inspections of alternative discharging sewage systems. The Board shall also establish requirements for maintenance contracts for alternative 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 ~~State Water Control Board~~*Director of the Department of Environmental Quality*.

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems. 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 Commissioner 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 Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

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 for permits issued by the Commissioner.

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,

1781 (e) Ground waters,
1782 (f) Areas and places of human habitation,
1783 (g) Property lines.
1784 6. Standards as to the adequacy of an approved water supply.
1785 7. Standards governing the transportation of sewage.
1786 8. A prohibition against the discharge of untreated sewage onto land or into waters of the
1787 Commonwealth.
1788 9. A requirement that such residences, buildings, structures and other places designed for human
1789 occupancy as the Board may prescribe be provided with a sewerage system or treatment works.
1790 10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not
1791 permitted through the then current sewage handling and disposal regulations, to treat and dispose of
1792 sewage as effectively as approved methods.
1793 11. Standards for inspections of and requirements for maintenance contracts for alternative
1794 discharging sewage systems.
1795 12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a
1796 requirement that the owner obtain a permit from the Commissioner prior to the construction, installation,
1797 modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.
1798 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage
1799 systems.
1800 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage
1801 system permits.
1802 15. Criteria for approved training courses, testing requirements, and application fees for persons
1803 wishing to be authorized onsite soil evaluators.
1804 16. Procedures for listing, removing from the list, and reinstating on the list those persons who have
1805 successfully qualified to be authorized onsite soil evaluators.
1806 C. A fee of \$75 shall be charged for filing an application for an onsite sewage disposal system or an
1807 alternative discharging sewage system permit with the Department. Funds received in payment of such
1808 charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to
1809 a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for
1810 the purpose of carrying out the provisions of this title. However, \$10 of each fee shall be credited to the
1811 Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.
1812 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose
1813 incomes are below the federal poverty guidelines established by the United States Department of Health
1814 and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage
1815 disposal system. If the Department denies the permit for land on which the applicant seeks to construct
1816 his principal place of residence, then such fee shall be refunded to the applicant.
1817 From such funds as are appropriated to the Department from the special fund, the Board shall
1818 apportion a share to local or district health departments to be allocated in the same ratios as provided
1819 for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to
1820 the local or district health departments on a quarterly basis.
1821 D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and
1822 disposal of sewage as they affect the public health and welfare, the Board shall, in establishing
1823 standards, give due consideration to economic costs of such standards in accordance with the applicable
1824 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).
1825 E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of
1826 alternative discharging sewage systems as may be required by the Board. The funds received in payment
1827 of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems
1828 necessary, to the Department for the purpose of carrying out the provisions of this section. However,
1829 \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to
1830 § 32.1-164.1:01.
1831 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose
1832 incomes are below the federal poverty guidelines established by the United States Department of Health
1833 and Human Services.
1834 F. Any owner who violates any provision of this section or any regulation of the Board of Health or
1835 the State Water Control Board relating to alternative discharging sewage systems or who fails to comply
1836 with any order of the Board of Health or any special final order of the ~~State Water Control~~
1837 ~~Board~~ *Director of the Department of Environmental Quality* shall be subject to the penalties provided in
1838 §§ 32.1-27 and 62.1-44.32.
1839 In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its
1840 agent may initiate a civil action against any user or users of an alternative discharging sewage system to
1841 recover that portion of any civil penalty imposed against the owner which directly resulted from
1842 violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

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

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

I. The Board shall establish a uniform schedule of civil penalties for violations of regulations promulgated pursuant to subsection B that are not remedied within 30 days after service of notice from the Department. Civil penalties collected pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be not more than \$100 for the initial violation and not more than \$150 for each additional violation. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not apply to unoccupied structures which do not contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases. The Department may pursue other remedies as provided by law; however, designation of a particular violation for a civil penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases.

The Department may issue a civil summons ticket as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the Department prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court with jurisdiction in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation, the Department shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding. This section shall not be interpreted to allow the imposition of civil penalties for activities related to land development.

§ 32.1-164. (Effective July 1, 2009) Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of permits; inspections; civil penalties.

1904 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,
1905 transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging
1906 sewage systems, and treatment works as they affect the public health and welfare. The Board shall also
1907 have supervision and control over the maintenance, inspection, and reuse of alternative onsite sewage
1908 systems as they affect the public health and welfare. In discharging the responsibility to supervise and
1909 control the safe and sanitary treatment and disposal of sewage as they affect the public health and
1910 welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground
1911 water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State
1912 ~~Water Control Board~~ *Director of the Department of Environmental Quality*, the Board of Health shall
1913 assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163.
1914 All such permits shall comply with the applicable regulations of the State Water Control Board and be
1915 registered with the ~~State Water Control Board~~ *Director of the Department of Environmental Quality*.

1916 In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board
1917 shall require and the Department shall conduct regular inspections of alternative discharging sewage
1918 systems. The Board shall also establish requirements for maintenance contracts for alternative
1919 discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an
1920 alternative discharging sewage system, that the applicant present an executed maintenance contract. Such
1921 contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System
1922 permit issued by the ~~State Water Control Board~~ *Director of the Department of Environmental Quality*.

1923 B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and
1924 disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the
1925 maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be
1926 designed to protect the public health and promote the public welfare and may include, without
1927 limitation:

1928 1. A requirement that the owner obtain a permit from the Commissioner prior to the construction,
1929 installation, modification or operation of a sewerage system or treatment works except in those instances
1930 where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

1931 2. Criteria for the granting or denial of such permits.

1932 3. Standards for the design, construction, installation, modification and operation of sewerage systems
1933 and treatment works for permits issued by the Commissioner.

1934 4. Standards governing disposal of sewage on or in soils.

1935 5. Standards specifying the minimum distance between sewerage systems or treatment works and:

1936 (a) Public and private wells supplying water for human consumption,

1937 (b) Lakes and other impounded waters,

1938 (c) Streams and rivers,

1939 (d) Shellfish waters,

1940 (e) Ground waters,

1941 (f) Areas and places of human habitation,

1942 (g) Property lines.

1943 6. Standards as to the adequacy of an approved water supply.

1944 7. Standards governing the transportation of sewage.

1945 8. A prohibition against the discharge of untreated sewage onto land or into waters of the
1946 Commonwealth.

1947 9. A requirement that such residences, buildings, structures and other places designed for human
1948 occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

1949 10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not
1950 permitted through the then current sewage handling and disposal regulations, to treat and dispose of
1951 sewage as effectively as approved methods.

1952 11. Standards for inspections of and requirements for maintenance contracts for alternative
1953 discharging sewage systems.

1954 12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a
1955 requirement that the owner obtain a permit from the Commissioner prior to the construction, installation,
1956 modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.

1957 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage
1958 systems.

1959 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage
1960 system permits.

1961 C. A fee of \$75 shall be charged for filing an application for an onsite sewage system or an
1962 alternative discharging sewage system permit with the Department. Funds received in payment of such
1963 charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to
1964 a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for
1965 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 § 32.1-164.1:01.

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 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.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

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 necessary, to the Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

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.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or any special final order of the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* shall be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

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

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

H. The Board shall establish a program for the operation and maintenance of alternative onsite systems. The program shall require:

1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the operation permit;

2. The licensed operator to provide a report on the results of the site visit utilizing the web-based system required by this subsection. A fee of \$1 shall be paid by the licensed operator at the time the report is filed. Such fees shall be credited to the Onsite Operation and Maintenance Fund established pursuant to § 32.1-164.8;

2027 3. A statewide web-based reporting system to track the operation, monitoring, and maintenance
2028 requirements of each system, including its components. The system shall have the capability for
2029 pre-notification of operation, maintenance, or monitoring to the operator or owner. Licensed operators
2030 shall be required to enter their reports onto the system. The Department of Health shall utilize the
2031 system to provide for compliance monitoring of operation and maintenance requirements throughout the
2032 state. The Commissioner shall consider readily available commercial systems currently utilized within
2033 the Commonwealth; and

2034 4. Any additional requirements deemed necessary by the Board.

2035 I. The Board shall promulgate regulations governing the requirements for maintaining alternative
2036 onsite sewage systems.

2037 J. The Board shall establish a uniform schedule of civil penalties for violations of regulations
2038 promulgated pursuant to subsection B that are not remedied within 30 days after service of notice from
2039 the Department. Civil penalties collected pursuant to this chapter shall be credited to the Environmental
2040 Health Education and Training Fund established pursuant to § 32.1-248.3.

2041 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty
2042 for any one violation shall be not more than \$100 for the initial violation and not more than \$150 for
2043 each additional violation. Each day during which the violation is found to have existed shall constitute a
2044 separate offense. However, specified violations arising from the same operative set of facts shall not be
2045 charged more than once in any 10-day period, and a series of specified violations arising from the same
2046 operative set of facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not
2047 apply to unoccupied structures which do not contribute to the pollution of public or private water
2048 supplies or the contraction or spread of infectious, contagious, or dangerous diseases. The Department
2049 may pursue other remedies as provided by law; however, designation of a particular violation for a civil
2050 penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that
2051 contributes to or is likely to contribute to the pollution of public or private water supplies or the
2052 contraction or spread of infectious, contagious, or dangerous diseases.

2053 The Department may issue a civil summons ticket as provided by law for a scheduled violation. Any
2054 person summoned or issued a ticket for a scheduled violation may make an appearance in person or in
2055 writing by mail to the Department prior to the date fixed for trial in court. Any person so appearing
2056 may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

2057 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit
2058 liability, the violation shall be tried in the general district court with jurisdiction in the same manner and
2059 with the same right of appeal as provided for by law. In any trial for a scheduled violation, the
2060 Department shall have the burden of proving by a preponderance of the evidence the liability of the
2061 alleged violator. An admission of liability or finding of liability under this section shall not be deemed
2062 an admission at a criminal proceeding.

2063 This section shall not be interpreted to allow the imposition of civil penalties for activities related to
2064 land development.

2065 § 45.1-161.6. Department to serve as lead agency for inspections undertaken subsequent to the
2066 issuance of a permit.

2067 Following the issuance of any permit under Chapter 16 (§ 45.1-180 et seq.) or 19 (§ 45.1-226 et seq.)
2068 of this title, the Department shall serve as the lead agency for enforcement of the provisions of the
2069 permit. Any other agency which has reviewed and approved, or not disapproved, a permit application
2070 prior to its approval by the Director shall contact the Director or his designee prior to making any
2071 routine inspection. The Director or his designee shall then contact the permittee, if prior contact is to be
2072 made, to schedule the inspection and shall accompany any employee of any agency other than the
2073 Department during any inspection by such other agency. However, nothing in this section shall apply in
2074 the event of a blackwater discharge, a failure of waste treatment facilities, or other situation that in the
2075 judgment of the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* requires
2076 an inspection on an emergency or expedited basis.

2077 § 45.1-179.9. Cancellation or suspension of permit.

2078 Whenever, after a public hearing held in conjunction with the ~~Board~~ *Director of the Department of*
2079 *Environmental Quality*, the Department determines that a holder of a permit issued pursuant to the
2080 provisions of this chapter is willfully violating any provision of such permit or any provision of this
2081 chapter, the Department may cancel or suspend such permit for cause or impose limitations on the future
2082 use thereof in order to prevent future violations.

2083 § 45.1-254. National pollutant discharge elimination system permits.

2084 A. Upon request of the Director, the ~~State Water Control Board~~ *Director of the Department of*
2085 *Environmental Quality* may delegate to the Director its authority, under the State Water Control Law,
2086 Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 to issue, amend, revoke and enforce national pollutant
2087 discharge elimination system permits for the discharge of sewage, industrial wastes and other wastes
2088 from coal surface mining operations. Upon receiving such delegation, the authority to issue, amend,

revoke and enforce national pollutant discharge elimination system permits under the State Water Control Law for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations, to the extent required under the federal Clean Water Act, P.L. 92-500, as amended, shall be vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided herein. For the purpose of enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to permits, orders and regulations issued by the Director in accordance with this section.

B. After having received delegation of authority pursuant to subsection A of this section, the Director shall transmit to the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* a copy of each application for a national pollutant discharge elimination system permit received by the Director, and provide written notice to the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* of every action related to the consideration of such permit application.

C. No national pollutant elimination system permit shall be issued if, within thirty days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system permit, the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* objects in writing to the issuance of such permit. Whenever the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the ~~State Water Control Board~~ *Director of the Department of Environmental Quality*.

D. An applicant who is aggrieved by an objection made under subsection C of this section shall have the right to a hearing before the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* pursuant to § 62.1-44.25. If the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* made pursuant to this subsection, shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Whenever, on the basis of any information available to it, the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system permit issued by the Director, it shall notify the person in alleged violation and the Director. If beyond the thirtieth day after notification by the ~~State Water Control Board~~ *Director of the Department of Environmental Quality*, the Director has not commenced appropriate enforcement action, the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23 and 62.1-44.32.

F. The Director shall promulgate such regulations as he deems necessary for the issuance, administration, monitoring and enforcement of national pollutant discharge elimination system permits for coal surface mining operations.

G. For the purpose of this section, the terms "sewage," "industrial wastes" and "other wastes" shall have the meanings ascribed to them in § 62.1-44.3.

§ 46.2-1178.1. On-road testing of motor vehicle emissions; authority to adopt regulations; civil charges.

A. The emissions inspection program authorized by § 46.2-1177 and provided for in § 46.2-1178 shall include on-road testing of motor vehicle emissions. The Board may promulgate regulations establishing on-road testing requirements including, but not limited to, collecting of data and information necessary to comply with the federal Clean Air Act Amendments of 1990, random testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards adopted by the Board.

B. If an emissions test performed pursuant to this section indicates that a motor vehicle does not meet emissions standards established by the Board, the ~~Board~~ *Director* may collect from the owner of the vehicle a civil charge based on actual emissions. The Board shall establish a schedule of civil charges to be collected pursuant to this section. Such civil penalties shall not exceed \$450 using 1990 as the base year and adjusted annually by the Consumer Price Index. The schedule of charges and their assessment shall be established by regulations promulgated to be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Civil charges assessed pursuant to this section shall be waived by the ~~Board~~ *Director* if, within thirty calendar days of notice of the violation, the vehicle's owner provides proof that the vehicle (i) since the date of the violation, has passed a vehicle emissions test as provided in § 46.2-1178, (ii) qualifies for an emissions inspection waiver as provided in § 46.2-1181, or (iii) has qualified for an emissions inspection waiver as provided in § 46.2-1181 within the twelve months prior to the violation.

2150 D. Civil charges collected pursuant to this section shall be paid into the state treasury and deposited
2151 by the State Treasurer into the Vehicle Emissions Inspection Program Fund pursuant to § 46.2-1182.2.

2152 E. If on-road testing indicates that a motor vehicle does not exceed emissions standards adopted by
2153 the Board for on-road testing pursuant to § 46.2-1179, such testing may be considered proof of
2154 compliance for the purposes of § 46.2-1183 and may be considered to satisfy the requirements of
2155 § 46.2-1177 for a biennial inspection. The Board shall establish criteria under which such testing shall
2156 satisfy the requirements of § 46.2-1183.

2157 § 46.2-1179.1. Board to adopt clean alternative fuel fleet standards for motor vehicles; penalty.

2158 A. For purposes of this section:

2159 "Clean alternative fuel" means any fuel, including methanol, ethanol, other alcohols, reformulated
2160 gasoline, diesel, natural gases, liquified petroleum gas, hydrogen, and electricity or other power source
2161 used in a clean fuel vehicle that complies with the standards applicable to such vehicle under the federal
2162 Clean Air Act when using such fuel or other power source. In the case of a flexible fuel vehicle or dual
2163 fuel vehicle, "clean alternative fuel" means only a fuel for which the vehicle was certified when
2164 operating on clean alternative fuel.

2165 "Fleet" means any centrally fueled fleet of ten or more motor vehicles owned or operated by a single
2166 entity. "Fleet" does not include motor vehicles held for lease or rental to the general public, motor
2167 vehicles held for sale by motor vehicle dealers, motor vehicles used for manufacturer product tests,
2168 law-enforcement and other emergency vehicles, or nonroad vehicles, including farm and construction
2169 vehicles.

2170 B. The Board may adopt by regulation motor vehicle clean alternative fuel fleet standards consistent
2171 with the provisions of Part C of Title II of the federal Clean Air Act for model years beginning with the
2172 model year 1998 or the first succeeding model year for which adoption of such standards is practicable.
2173 If adoption ~~and implementation~~ by the Board *and implementation by the Director* of an equivalent air
2174 pollution reduction program is approved by the federal Environmental Protection Agency, the regulation
2175 and program authorized by this section shall not become effective. Such regulations shall contain the
2176 minimum phase-in schedule contained in § 246 (b) of Part C of Title II of the Clean Air Act. However,
2177 nothing in this section shall preclude affected fleet owners from exceeding the minimum requirements of
2178 the federal Clean Air Act. Beginning in 1995 and upon adoption of the standards by the Board, the
2179 Board shall require the fleet owned by the federal government to meet the clean alternative fuel fleet
2180 standard and phase-in schedule established by the Board. If necessary to meet the Board's standards and
2181 phase-in schedule, the Board shall require fleets owned by the federal government to convert a portion
2182 of existing fleet vehicles to the use of clean alternative fuels as defined by the federal Clean Air Act.
2183 The standards specified in this subsection shall apply only to (i) motor vehicles registered in localities
2184 designated by the federal Environmental Protection Agency, pursuant to the federal Clean Air Act, as
2185 serious, severe, or extreme air quality nonattainment areas, or as maintenance areas formerly designated
2186 serious, severe, or extreme and (ii) motor vehicles not registered in the above-mentioned localities, but
2187 having either (a) a base of operations or (b) a majority of their annual travel in one or more of those
2188 localities.

2189 C. An owner of a covered fleet shall not use any motor vehicle or motor vehicle engine which is
2190 manufactured during or after the first model year to which the standards specified in subsection A of
2191 this section are applicable, if such vehicle or engine is registered or has its base of operations in the
2192 localities specified in subsection B of this section and has not been certified in accordance with
2193 regulations promulgated by the Board. The Board may promulgate regulations providing for reasonable
2194 exemptions consistent with the provisions of Part C of Title II of the federal Clean Air Act. Motor
2195 vehicles exempted from the provisions of this section shall forever be exempt.

2196 D. Any person that violates the requirements of this section or any regulation adopted hereunder
2197 shall be subject to the penalties in §§ 46.2-1187 and 46.2-1187.2. Each day of violation shall be a
2198 separate offense, and each motor vehicle shall be treated separately in assessing violations.

2199 E. In order to limit adverse economic and administrative impacts on covered fleets operating both in
2200 Virginia and in neighboring states, the Department of Environmental Quality shall, to the maximum
2201 extent practicable, coordinate the provisions of its regulations promulgated under this section with
2202 neighboring states' statutes and regulations relating to use of clean alternative fuels by motor vehicle
2203 fleets.

2204 F. The State Corporation Commission, as to matters within its jurisdiction, and the ~~Department of~~
2205 ~~Environmental Quality Board~~, as to other matters, may, should they deem such action necessary,
2206 promulgate regulations necessary or convenient to ensure the availability of clean alternative fuels to
2207 operators of fleets covered by the provisions of this section. ~~The State Air Pollution Control Board~~
2208 *The Director of the Department of Environmental Quality* may delegate to the Commissioner of Agriculture
2209 ~~its~~ *his* authority under the Air Pollution Control Law of Virginia, Chapter 13 (§ 10.1-1300 et seq.) of
2210 Title 10.1, to implement and enforce any provisions of ~~its~~ regulations covering the availability of clean
2211 alternative fuels. Upon receiving such delegation, the authority to implement and enforce the regulations

under the Air Pollution Control Law of Virginia shall be vested solely in the Commissioner, notwithstanding any provision of law contained in Title 10.1, except as provided in this section. The ~~State Air Pollution Control Board~~ *Director of the Department of Environmental Quality*, in delegating ~~its~~ *his* authority under this section, may make the delegation subject to any conditions ~~it~~ *he* deems appropriate to ensure effective implementation of the regulations according to the policies of the State Air Pollution Control Board.

§ 46.2-1187.2. Compelling compliance with regulations and orders; penalty.

Any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation ~~or order~~ of the Board *or order of the Director* may be compelled to comply by injunction, mandamus, or other appropriate remedy.

Without limiting the remedies which may be obtained under the foregoing provisions of this section, any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation ~~or order~~ of the Board *or order of the Director* or any provision of this article, shall, in the discretion of the court, be subject to a civil penalty of no more than \$25,000 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the emissions inspection station owner's business, the severity of the economic impact of the penalty on that business, and the seriousness of the violation. Such civil penalties may, in the discretion of the court, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used to abate environmental pollution in whatever manner the court, by order, may direct. However, where the emissions inspection station owner is the county, city, or town or an agent thereof, the court shall direct the penalty to be paid into the state treasury.

With the consent of the emissions inspection station owner who has violated or failed, neglected, or refused to obey any regulation *of the Board* or order of the ~~Board~~ *Director* or any provision of this article, the ~~Board~~ *Director* may, in any order issued by the ~~Board~~ *Director* against such owner, provide for the payment of civil charges in specific sums, not to exceed the limit in the foregoing provisions of this section. Such civil charges shall be in lieu of any civil penalty which could be imposed under the foregoing provisions of this section.

Any penalty provided for in this section to which an emissions inspection station owner is subject shall apply to any emissions inspector or certified emissions repair mechanic employed by or at that station.

As to emissions inspection station owners, emissions inspectors, and certified emissions repair mechanics, minor violations as set forth in Board regulations may be punishable by letters of reprimand from the Department. Major violations as set forth in Board regulations may be punishable by probation, suspension and/or license or certificate revocation, depending on the nature and type of violation. Civil penalties may be imposed only for major types of violations.

The Board shall provide by regulation a process whereby emissions inspection station owners, emissions inspectors and certified emissions repair mechanics may appeal penalties for violations. Such regulations regarding the process to appeal penalties for violations shall provide that the appeal process shall be handled by a person other than the Program Manager for the applicable emissions program or one of his regional employees.

§ 54.1-2300. (Effective until July 1, 2009) Definitions.

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

"Board" means the Board for Waterworks and Wastewater Works Operators.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, firm or company organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.

"Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.

"Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18, if so certified by the ~~State Water Control Board~~ *Director of the Department of Environmental Quality*; and (iii) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the ~~State Water Control Board~~ *Director of the*

2273 *Department of Environmental Quality.*

2274 "Waterworks means each system of structures and appliances used in connection with the collection,
2275 storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to
2276 the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to
2277 be a waterworks unless certified by the Board to be such.

2278 § 54.1-2300. (Effective July 1, 2009) Definitions.

2279 As used in this chapter, unless the context requires a different meaning:

2280 "Board" means the Board for Waterworks and Wastewater Works Operators and Onsite Sewage
2281 System Professionals.

2282 "Onsite sewage system" means a conventional onsite sewage system or alternative onsite sewage
2283 system as defined in § 32.1-163.

2284 "Operator" means any individual employed or appointed by any owner, and who is designated by
2285 such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute
2286 in charge, and whose duties include testing or evaluation to control waterworks or wastewater works
2287 operations or to operate and maintain onsite sewage systems. Not included in this definition are
2288 superintendents or directors of public works, city engineers, or other municipal or industrial officials
2289 whose duties do not include the actual operation or direct supervision of waterworks or wastewater
2290 works.

2291 "Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or
2292 private institution, corporation, association, firm or company organized or existing under the laws of this
2293 Commonwealth or of any other state or nation, or any person or group of persons acting individually or
2294 as a group, who own, manage, or maintain waterworks or wastewater works.

2295 "Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an
2296 association or other similar legal entity engaged in operating waterworks or wastewater works.

2297 "Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving
2298 more than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works
2299 serving fewer than 400 persons, as set forth in § 62.1-44.18, if so certified by the ~~State Water Control~~
2300 ~~Board~~ *Director of the Department of Environmental Quality*; and (iii) facilities for discharge to state
2301 waters of industrial wastes or other wastes, if certified by the ~~State Water Control Board~~ *Director of the*
2302 *Department of Environmental Quality.*

2303 "Waterworks" means each system of structures and appliances used in connection with the collection,
2304 storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to
2305 the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to
2306 be a waterworks unless certified by the Board to be such.

2307 § 56-586.1. Electric energy emergencies.

2308 A. As used in this section, "electric energy emergency" means an unplanned interruption in the
2309 generation or transmission of electricity resulting from a hurricane, ice storm, windstorm, earthquake or
2310 similar natural phenomena, or from a criminal act affecting such generation or transmission, act of war
2311 or act of terrorism, which interruption is (i) of such severity that minimum levels of reliable service
2312 cannot be maintained using resources practicably obtainable from the market and (ii) so imminently and
2313 substantially threatening to the health, safety or welfare of residents of this Commonwealth that
2314 immediate action of state government is necessary to prevent loss of life, protect the public health or
2315 safety, and prevent unnecessary or avoidable damage to property.

2316 B. The Governor is authorized, after finding that an electric energy emergency exists and that
2317 appropriate federal and state agencies and appropriate reliability councils cannot adequately address such
2318 emergency, to declare an electric energy emergency by filing a written declaration with the Secretary of
2319 the Commonwealth. The declaration shall state the counties and cities or utility service areas of the
2320 Commonwealth in which the declaration is applicable, or its statewide application. A declared electric
2321 energy emergency shall go into immediate effect upon filing and continue in effect for the period
2322 prescribed in the declaration, but not more than thirty days. At the end of the prescribed period, the
2323 Governor may issue another declaration extending the emergency. The Governor shall terminate such
2324 declaration as soon as the basis for such declaration no longer exists.

2325 C. During a declared electric energy emergency, the Governor is authorized, in compliance with
2326 guidelines of the Department of Emergency Services promulgated as provided in subsection G, to
2327 require any generator or any municipal electric utility that is capable of generating but (i) is not
2328 generating or (ii) is not generating at its full potential during such declared electric emergency, to
2329 generate, dispatch or sell electricity from a facility that it operates within the Commonwealth, to the
2330 Commonwealth for distribution within the areas of the Commonwealth designated in the declaration. The
2331 quantity of electricity required to be generated, dispatched or sold, and the duration of such
2332 requirements, shall be as determined by the Governor to be necessary to alleviate the electric energy
2333 emergency hardship. The Commonwealth shall compensate an entity required to generate, dispatch, or
2334 sell electricity pursuant to this subsection, and the operator of any transmission facilities over which the

electricity is transmitted, in the manner provided in § 56-522, mutatis mutandis, unless otherwise provided by federal law. The *Director of the Department of Environmental Quality, the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board* shall issue any temporary or emergency permit, order, or variance necessary to authorize any permit amendments or other changes needed to meet the requirements imposed under this section and the Governor may petition the President to declare a regional energy emergency under 42 U.S.C. § 7410(f) as necessary to suspend enforcement of any provision of the federal Clean Air Act. Any increased operation required during such declared emergency shall not be counted towards the number of hours of operation allowed during the year. No civil charges or penalties shall be imposed for any violation that occurs as a result of actions taken that are necessary for the required generation, dispatch or sale during the declared electric energy emergency. The foregoing provisions shall apply to all actions the entity takes in connection with such required generation, dispatch or sale during the period of the declared emergency.

D. During a declared electric energy emergency, the Governor may use the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the Commonwealth, and of the political subdivisions thereof, to the maximum extent practicable and necessary to meet the electric energy emergency. The officers and personnel of all such departments, offices, and agencies shall cooperate with and extend such services and facilities to the Governor upon request.

E. During a declared electric energy emergency, the Governor is authorized to request the Secretary of the United States Department of Energy to invoke section 202(C) of the Federal Power Act, 16 U.S.C. § 824a (1935).

F. The General Assembly is authorized by joint resolution to terminate any declaration of an electric energy emergency. The emergency shall be terminated at the time of filing of the joint resolution with the Secretary of the Commonwealth.

G. The Department of Emergency Services, in consultation with the Commission and the Secretary of Commerce and Trade, shall establish guidelines for the implementation of the Governor's powers pursuant to subsection C that protect the public health and safety and prevent unnecessary or avoidable damage to property with a minimum of economic disruption to generators, transmitters and distributors of electricity. Such guidelines shall:

1. Define various foreseeable levels of electric energy emergencies and specify appropriate measures to be taken for each type of electric energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property;

2. Prescribe appropriate response measures for each level of electric energy emergency; and

3. Equitably distribute the burdens and benefits resulting from the implementation of this section among other members of the affected class of persons within all geographic regions of the Commonwealth.

H. During a declared electric energy emergency, the attorney general may bring an action for injunctive or other appropriate relief in the Circuit Court of the City of Richmond to secure prompt compliance. The court may issue an ex parte temporary order without notice that shall enforce the prohibitions, restrictions or actions that are necessary to secure compliance with the guideline, order or declaration.

I. During a declared electric energy emergency, no person shall intentionally violate any guideline adopted or declaration issued pursuant to this section. Any person who violates this section is guilty of a Class 1 misdemeanor.

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation. Certified pollution control equipment and facilities consisting of equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, including equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as landfill gas or synthetic or natural gas recovery from waste, placed in service on or after July 1, 2006, shall be exempt from state and local taxation pursuant to subsection d of Section 6 of Article X of the Constitution of Virginia.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or

2396 requirements for abatement or control of water or atmospheric pollution or contamination. Such property
2397 shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps,
2398 underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas
2399 recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or
2400 generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not
2401 such property has been certified to the Department of Taxation by a state certifying authority.

2402 "State certifying authority" shall mean the ~~State Water Control Board~~, *Director of the Department of*
2403 *Environmental Quality* for water pollution, ~~the State Air Pollution Control Board~~, for air pollution,
2404 *waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production*
2405 *facilities*; the Department of Mines, Minerals and Energy, for coal, oil, and gas production, including
2406 gas, natural gas, and coalbed methane gas; and the ~~Virginia Waste Management Board~~, for waste
2407 *disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities*, and
2408 shall include any interstate agency authorized to act in place of a certifying authority of the
2409 Commonwealth.

2410 § 58.1-3664. Environmental restoration sites.

2411 Environmental restoration sites, as defined herein, are hereby declared to be a separate class of
2412 property and shall constitute a classification for local taxation separate from other such classification of
2413 real property. The governing body of any county, city or town may, by ordinance, exempt or partially
2414 exempt such property from local taxation annually for a period not in excess of five years.

2415 "Environmental restoration site" means real estate which contains or did contain environmental
2416 contamination from the release of hazardous substances, hazardous wastes, solid waste or petroleum, the
2417 restoration of which would abate or prevent pollution to the atmosphere or waters of the Commonwealth
2418 and which (i) is subject to voluntary remediation pursuant to § 10.1-1232 and (ii) receives a certificate
2419 of continued eligibility from the ~~Virginia Waste Management Board~~ *Director of the Department of*
2420 *Environmental Quality* during each year which it qualifies for the tax treatment described in this section.

2421 § 62.1-44.3. Definitions.

2422 Unless a different meaning is required by the context, the following terms as used in this chapter
2423 shall have the meanings hereinafter respectively ascribed to them:

2424 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are
2425 not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste
2426 assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows
2427 for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection
2428 of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream
2429 beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic
2430 (including public water supply), agricultural uses, electric power generation, commercial, and industrial
2431 uses.

2432 "Board" means the State Water Control Board.

2433 "Certificate" means any *permit or* certificate issued by the ~~Board~~ *Director, including general permits,*
2434 *issued under this chapter.*

2435 "*Department*" means the *Department of Environmental Quality.*

2436 "*Director*" means the *Director of the Department of Environmental Quality.*

2437 "Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine,
2438 coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every
2439 other industry or plant or works the operation of which produces industrial wastes or other wastes or
2440 which may otherwise alter the physical, chemical or biological properties of any state waters.

2441 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

2442 "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture,
2443 trade, or business or from the development of any natural resources.

2444 "The law" or "this law" means the law contained in this chapter as now existing or hereafter
2445 amended.

2446 "Member" means a member of the Board.

2447 "Normal agricultural activities" means those activities defined as an agricultural operation in
2448 § 3.1-22.29 and any activity that is conducted as part of or in furtherance of such agricultural operation
2449 but shall not include any activity for which a permit would have been required as of January 1, 1997,
2450 under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

2451 "Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any
2452 activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include
2453 any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C.
2454 § 1344 or any regulations promulgated pursuant thereto.

2455 "Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar,
2456 oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution
2457 in any state waters.

"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.

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

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

"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.

"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.

"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.

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

"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.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to § 62.1-44.15 (7).

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

"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.

"Sewage treatment works" or "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, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"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.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

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

"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.

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

§ 62.1-44.4. Control by Commonwealth as to water quality.

2519 (1) No right to continue existing quality degradation in any state water shall exist nor shall such right
2520 be or be deemed to have been acquired by virtue of past or future discharge of sewage, industrial wastes
2521 or other wastes or other action by any owner. The right and control of the Commonwealth in and over
2522 all state waters is hereby expressly reserved and reaffirmed.

2523 (2) Waters whose existing quality is better than the established standards as of the date on which
2524 such standards become effective will be maintained at high quality; provided that the ~~Board~~Director has
2525 the power to authorize any project or development, which would constitute a new or an increased
2526 discharge of effluent to high quality water, when it has been affirmatively demonstrated that a change is
2527 justifiable to provide necessary economic or social development; and provided, further, that the
2528 necessary degree of waste treatment to maintain high water quality will be required where physically
2529 and economically feasible. Present and anticipated use of such waters will be preserved and protected.

2530 § 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as
2531 authorized by permit; notification required.

2532 A. Except in compliance with a certificate issued by the ~~Board~~Director, it shall be unlawful for any
2533 person to:

2534 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious
2535 substances;

2536 2. Excavate in a wetland;

2537 3. Otherwise alter the physical, chemical or biological properties of state waters and make them
2538 detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic
2539 or industrial consumption, or for recreation, or for other uses; or

2540 4. On and after October 1, 2001, conduct the following activities in a wetland:

2541 a. New activities to cause draining that significantly alters or degrades existing wetland acreage or
2542 functions;

2543 b. Filling or dumping;

2544 c. Permanent flooding or impounding; or

2545 d. New activities that cause significant alteration or degradation of existing wetland acreage or
2546 functions.

2547 5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land
2548 disturbing activities unless in compliance with a permit issued pursuant to Article 1.1 (§ 10.1-603.1 et
2549 seq.) of Chapter 6 of Title 10.1.

2550 B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i)
2551 a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or
2552 upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon
2553 learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of
2554 the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant
2555 to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written
2556 notice to the Director of the Department of Environmental Quality shall follow initial notice within the
2557 time frame specified by the federal Clean Water Act.

2558 § 62.1-44.9. Qualifications of members.

2559 A. Members of the Board shall be citizens of the Commonwealth; shall be selected from the
2560 Commonwealth at large for merit without regard to political affiliation; and shall, by ~~character and~~
2561 ~~reputation,~~ reasonably be expected to inspire the highest degree of cooperation and confidence in the
2562 work of the Board. No person shall become a member of the Board who receives, or during the
2563 previous two years has received, a significant portion of his income directly or indirectly from certificate
2564 or permit holders or applicants for a certificate or permit.

2565 For the purposes of this section, "significant portion of income" means ten percent or more of gross
2566 personal income for a calendar year, except that it means fifty percent or more of gross personal income
2567 for a calendar year if the recipient is over sixty years of age and is receiving that portion under
2568 retirement, pension, or similar arrangement. Income includes retirement benefits, consultant fees, and
2569 stock dividends. Income is not received directly or indirectly from certificate or permit holders or
2570 applicants for certificates or permits when it is derived from mutual fund payments, or from other
2571 diversified investments for which the recipient does not know the identity of the primary sources of
2572 ~~income~~their education, training, or experience, be knowledgeable of water quality matters and principles
2573 and shall be fairly representative of agriculture, business, conservation, and public health.

2574 B. Notwithstanding any other provision of this section relating to Board membership, the
2575 qualifications for Board membership shall not be more strict than those which may be required by
2576 federal statute or regulations of the United States Environmental Protection Agency.

2577 § 62.1-44.13. Inspections and investigations, etc.

2578 The ~~Board~~Director shall make such inspections, conduct such investigations and do such other things
2579 as are necessary to carry out the provisions of this chapter, within the limits of appropriation, funds, or
2580 personnel which are, or become, available from any source for this purpose.

§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.2-106. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Director shall serve as the Board's Executive Director. The Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in §§ 62.1-44.15 (8b) and 62.1-44.34:20 of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to shall issue, reissue, revoke, terminate, modify, amend, and enforce any permits, licenses, certificates, variances, and exemptions under this chapter; adopt and issue general permits and general permit regulations; exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board issued hereunder. The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations.

§ 62.1-44.15. Powers and duties; civil penalties.

It shall be the duty of the Board and it shall have the authority: The Board and the Director shall have the following powers and duties:

(1) —Repealed.]

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

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

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

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

(3a) To The Board may establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

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

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

2642 (5) ~~To~~*The Director may* issue, revoke or amend certificates under prescribed conditions for: (a) the
2643 discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration
2644 otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland;
2645 or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new
2646 activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii)
2647 filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant
2648 alteration or degradation of existing wetland acreage or functions.

2649 (5a) All certificates issued by the ~~Board~~*Director* under this chapter shall have fixed terms. The term
2650 of a Virginia ~~Pollution~~*Pollutant* Discharge Elimination System permit shall not exceed five years. The
2651 term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the
2652 length of any required monitoring, or other project operations or permit conditions; however, the term
2653 shall not exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years,
2654 except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations
2655 shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a
2656 Virginia Pollution Abatement permit has been issued at least once every five years, except that the
2657 Department shall inspect all facilities covered by the Virginia Pollution Abatement permit for confined
2658 animal feeding operations annually. Department personnel performing inspections of confined animal
2659 feeding operations shall be certified under the voluntary nutrient management training and certification
2660 program established in § 10.1-104.2. The term of a certificate issued ~~by the Board~~*hereunder* shall not be
2661 extended by modification beyond the maximum duration and the certificate shall expire at the end of the
2662 term unless an application for a new permit has been timely filed as required by the regulations of the
2663 Board and the ~~Board~~*Director* is unable, through no fault of the permittee, to issue a new permit before
2664 the expiration date of the previous permit.

2665 (5b) Any certificate issued by the ~~Board~~*Director* under this chapter may, after notice and opportunity
2666 for a hearing, be amended or revoked on any of the following grounds or for good cause as may be
2667 provided by the regulations of the Board:

2668 1. The owner has violated any regulation or order ~~of the Board~~, any condition of a certificate, any
2669 provision of this chapter, or any order of a court, where such violation results in a release of harmful
2670 substances into the environment or poses a substantial threat of release of harmful substances into the
2671 environment or presents a hazard to human health or the violation is representative of a pattern of
2672 serious or repeated violations which, in the opinion of the ~~Board~~*Director*, demonstrates the owner's
2673 disregard for or inability to comply with applicable laws, regulations, or requirements;

2674 2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material
2675 fact in applying for a certificate, or in any other report or document required under this law or under the
2676 regulations of the Board;

2677 3. The activity for which the certificate was issued endangers human health or the environment and
2678 can be regulated to acceptable levels by amendment or revocation of the certificate; or

2679 4. There exists a material change in the basis on which the permit was issued that requires either a
2680 temporary or a permanent reduction or elimination of any discharge controlled by the certificate
2681 necessary to protect human health or the environment.

2682 (5c) Any certificate issued by the ~~Board~~*Director* under this chapter relating to dredging projects
2683 governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may
2684 be conditioned upon a demonstration of financial responsibility for the completion of compensatory
2685 mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate
2686 of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of
2687 Engineers requires demonstration of financial responsibility for the completion of compensatory
2688 mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army
2689 Corps of Engineers shall be used to meet this requirement.

2690 (6) ~~To~~*The Director may* make investigations and inspections, to ensure compliance with any
2691 certificates, standards, policies, rules, regulations, rulings and special orders ~~which it may adopt~~, issue or
2692 establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such
2693 compliance. In recognition of §§ 32.1-164 and 62.1-44.18, the ~~Board~~*Director* and the State Department
2694 of Health shall enter into a memorandum of understanding establishing a common format to consolidate
2695 and simplify inspections of sewage treatment plants and coordinate the scheduling of the inspections.
2696 The new format shall ensure that all sewage treatment plants are inspected at appropriate intervals in
2697 order to protect water quality and public health and at the same time avoid any unnecessary
2698 administrative burden on those being inspected.

2699 (7) ~~To~~*The Board may* adopt rules governing the procedure of the Board with respect to: (a) hearings;
2700 (b) the filing of reports; (c) ~~the issuance of certificates and special orders~~; and (d) all other matters
2701 relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted
2702 under this section shall be by such means as the Board may prescribe.

2703 (8a) ~~To~~*The Director may* issue special orders to owners (i) who are permitting or causing the

pollution, as defined by § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Board to comply with such directive, (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies, (vi) who have violated the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned treatment works to comply with such terms and provisions or (vii) who have contravened any applicable pretreatment standard or requirement to comply with such standard or requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Board/Director. Orders issued pursuant to this subsection may include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order. The Board/Director may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board/Director shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) of this chapter shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11.

(8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided that if the Board/Director finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board/Director may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

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

(8d) With the consent of any owner who has violated or failed, neglected or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board/Director may provide, in an order issued by the Board/Director against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of this title, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued

2765 under those articles.

2766 The amendments to this section adopted by the 1976 Session of the General Assembly shall not be
2767 construed as limiting or expanding any cause of action or any other remedy possessed by the Board
2768 prior to the effective date of said amendments.

2769 (8e) The Board shall develop and provide an opportunity for public comment on guidelines and
2770 procedures that contain specific criteria for calculating the appropriate penalty for each violation based
2771 upon the severity of the violations, the extent of any potential or actual environmental harm, the
2772 compliance history of the facility or person, any economic benefit realized from the noncompliance, and
2773 the ability of the person to pay the penalty.

2774 (8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without
2775 an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent
2776 or minimize overflows of sewage from such system, the Board shall provide public notice of and
2777 reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may
2778 impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water
2779 Act. Any person who comments on the proposed order shall be given notice of any hearing to be held
2780 on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be
2781 heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d),
2782 any person who commented on the proposed order may file a petition, within 30 days after the issuance
2783 of such order, requesting the ~~Board~~Director to set aside such order and provide a formal hearing
2784 thereon. If the evidence presented by the petitioner in support of the petition is material and was not
2785 considered in the issuance of the order, the ~~Board~~Director shall immediately set aside the order, provide
2786 a formal hearing, and make such petitioner a party. If the ~~Board~~Director denies the petition, the
2787 ~~Board~~Director shall provide notice to the petitioner and make available to the public the reasons for
2788 such denial, and the petitioner shall have the right to judicial review of such decision under § 62.1-44.29
2789 if he meets the requirements thereof.

2790 (9) ~~To~~The Director is authorized to make such rulings under §§ 62.1-44.16, 62.1-44.17 and
2791 62.1-44.19 as may be required upon requests or applications ~~to the Board~~, the owner or owners affected
2792 to be notified by certified mail as soon as practicable after the ~~Board~~Director makes them and such
2793 rulings to become effective upon such notification.

2794 (10) ~~To~~The Board is authorized to adopt such regulations as it deems necessary to enforce the
2795 general water quality management program of the Board in all or part of the Commonwealth, except that
2796 a description of provisions of any proposed regulation which are more restrictive than applicable federal
2797 requirements, together with the reason why the more restrictive provisions are needed, shall be provided
2798 to the standing committee of each house of the General Assembly to which matters relating to the
2799 content of the regulation are most properly referable.

2800 (11) ~~To~~The Board is authorized to investigate any large-scale killing of fish.

2801 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a
2802 certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state
2803 waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect
2804 such settlement with the owner as will cover the costs incurred by the Board and by the Department of
2805 Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish
2806 destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the
2807 Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover
2808 from the owner such costs and value, plus any court or other legal costs incurred in connection with
2809 such action.

2810 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any
2811 circuit court within the territory embraced by such political subdivision. If the owner is an
2812 establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the
2813 circuit court of the county in which such establishment is located. If the owner is an individual or group
2814 of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in
2815 which such person or any of them reside.

2816 (c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of
2817 the fish killed and the proceedings shall be as though the State Water Control Board were the owner of
2818 the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as
2819 a defense in bar to any such action.

2820 (d) The proceeds of any recovery had under this subsection shall, when received by the Board, be
2821 applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The
2822 balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries'
2823 management practices as in its judgment will best restore or replace the fisheries' values lost as a result
2824 of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish
2825 or other appropriate species. Any such funds received are hereby appropriated for that purpose.

2826 (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) ~~The Board is authorized to~~ administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in the Commonwealth.

(13) ~~The Board is authorized 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~~ Director, 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~~ Director is to seek the advice of local, regional, or state planning authorities.

(14) ~~The Board is authorized 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) ~~The Board is authorized 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 *recommendations to the Director for general permits* and that 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) ~~The Board is authorized 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) *The Director is authorized to issue, reissue, revoke, terminate, modify, amend, and enforce any permits, licenses, and certificates, including variances and exemptions thereto, for activities subject to provisions of this chapter.*

§ 62.1-44.15:01. Localities particularly affected.

A. After June 30, 1994, before ~~promulgating~~ *the Board adopts* any regulation under consideration or ~~granting~~ *the Director grants* any variance to an existing regulation, or ~~issuing~~ *issues* any permit, if the Board or Director finds that there are localities particularly affected by the regulation, variance or permit, the Board or Director shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the specific pollutants involved and the total quantity of each that may be discharged.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board or Director for at least 15 days after any hearing on the regulation, variance or permit, unless the Board votes or the Director determines to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

B. On or after January 1, 2007, the Board shall ensure that all wetland inventory maps that identify the location of wetlands in the Commonwealth and that are maintained by the Board be made readily available to the public. The Board shall notify the circuit court clerk's office and other appropriate officials in each locality of the availability of the wetland inventory maps and request that the locality provide information in the location where the land records of the locality are maintained on the availability of the wetland inventory maps as well as the potential Virginia Water Protection Permit

2888 requirements.

2889 § 62.1-44.15:1. Limitation on power to require construction of sewerage systems or sewage or other
2890 waste treatment works.

2891 Nothing contained in this chapter shall be construed to empower the Board *or Director* to require the
2892 Commonwealth, or any political subdivision thereof, or any authority created under the provisions of
2893 § 15.2-5102 or §§ 15.2-5152 through 15.2-5158, to construct any sewerage system, sewage treatment
2894 works, or water treatment plant waste treatment works or system necessary to (1) upgrade the present
2895 level of treatment in existing systems or works to abate existing pollution of state waters, or (2) expand
2896 a system or works to accommodate additional growth, unless the Board shall have previously committed
2897 itself to provide financial assistance from federal and state funds equal to the maximum amount
2898 provided for under § 8 or other applicable sections of the Federal Water Pollution Control Act (P.L.
2899 84-660, as amended), or unless the Commonwealth or political subdivision or authority voluntarily
2900 agrees, or is directed by the Board with the concurrence of the Governor, to proceed with such
2901 construction, subject to reimbursement under § 8, or other applicable sections of such federal act.

2902 The foregoing restriction shall not apply to those cases where existing sewerage systems or sewage
2903 or other waste treatment works cease to perform in accordance with their approved certificate
2904 requirements.

2905 Nothing contained in this chapter shall be construed to empower the Board *or Director* to require the
2906 Commonwealth, or any political subdivision thereof, to upgrade the level of treatment in any works to a
2907 level more stringent than that required by applicable provisions of the Federal Water Pollution Control
2908 Act, as amended.

2909 § 62.1-44.15:1.1. Special orders; penalties.

2910 The ~~Board~~*Director* is authorized to issue special orders in compliance with the Administrative
2911 Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the ~~Board~~*Director* a plan to abate,
2912 control, prevent, remove, or contain any substantial and imminent threat to public health or the
2913 environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also
2914 include a demonstration of financial capability to implement the plan. Financial capability may be
2915 demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained
2916 within the Board, submission of a bond, corporate guarantee based upon audited financial statements, or
2917 such other instruments as the Board may deem appropriate. The Board may require that such plan and
2918 instruments be updated as appropriate. The ~~Board~~*Director* shall give due consideration to any plan
2919 submitted by the owner in accordance with §§ 10.1-1309.1, 10.1-1410, and 10.1-1428, in determining
2920 the necessity for and suitability of any plan submitted under this section.

2921 For the purposes of this section, "ceases operation" means to cease conducting the normal operation
2922 of a facility which is regulated under this chapter under circumstances where it would be reasonable to
2923 expect that such operation will not be resumed by the owner at the facility. The term shall not include
2924 the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance
2925 with Board regulations.

2926 Any person who ceases operations and who knowingly and willfully fails to implement a closure
2927 plan or to provide adequate funds for implementation of such plan shall, if such failure results in a
2928 significant harm or an imminent and substantial threat of significant harm to human health or the
2929 environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred
2930 in abating, controlling, preventing, removing, or containing such harm or threat.

2931 Any person who ceases operations and who knowingly and willfully fails to implement a closure
2932 plan or to provide adequate funds for implementation of such plan shall, if such failure results in a
2933 significant harm or an imminent and substantial threat of significant harm to human health or the
2934 environment, be guilty of a Class 4 felony.

2935 § 62.1-44.15:3. When application for permit considered complete.

2936 A. No application ~~submitted to the Board~~ for a new individual Virginia Pollutant Discharge
2937 Elimination permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be
2938 considered complete unless it contains notification from the county, city, or town in which the discharge
2939 is to take place that the location and operation of the discharging facility are consistent with applicable
2940 ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The county, city, or town
2941 shall inform in writing the applicant and the ~~Board~~*Director* of the discharging facility's compliance or
2942 noncompliance not more than thirty days from receipt by the chief administrative officer, or his agent,
2943 of a request from the applicant. Should the county, city, or town fail to provide such written notification
2944 within thirty days, the requirement for such notification is waived. The provisions of this subsection
2945 shall not apply to any discharge for which a valid certificate had been issued prior to March 10, 2000.

2946 B. No application for a certificate to discharge sewage into or adjacent to state waters from a
2947 privately owned wastewater treatment system serving fifty or more residences shall be considered
2948 complete unless the applicant has provided the ~~Executive~~ Director with notification from the State
2949 Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance

with all regulations and relevant orders of the State Corporation Commission.

§ 62.1-44.15:4. Notification of local governments and property owners.

A. Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the ~~Executive~~ Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the ~~Executive~~ Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this subsection.

B. Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the Board's antidegradation policy, as required by 40 C.F.R. 131.12, the Board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board. After receipt of the notice of the nomination localities shall be provided sixty days to comment on the consistency of the nomination with the locality's comprehensive plan.

C. Upon determining that a waterway or any segment of a waterway does not meet its water quality standard use designation as set out in the Board's regulations and as required by 1313 (d) of the federal Clean Water Act (33 U.S.C. 1251 et seq.) and 40 C.F.R. 130.7 (b), the ~~Board~~ Director shall notify each locality in which the waterway or segment lies. The written notification shall include, at a minimum: (i) a description of the reasons the waters do not meet the water quality standard including specific parameters and criteria not met; (ii) a layman's description of the location of the waters; (iii) the known sources of the pollution; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the failure of the waterway or segment to meet the standards. After receipt of the notification, local governments shall have thirty days to comment.

D. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the ~~Board~~ Director shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum: (i) the name of the applicant; (ii) the nature of the application and proposed discharge; (iii) the availability and timing of any comment period; and (iv) upon request, any other information known to, or in the possession of, the ~~Board~~ or the Department regarding the applicant not required to be held confidential by this chapter. The ~~Board~~ Director shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one quarter mile downstream and one quarter mile upstream or to the fall line whichever is closer on tidal waters, and (ii) each locality and riparian property owner to a distance one half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river, at the point or proposed point of discharge, is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the ~~Board~~ Director.

E. Upon the commencement of public notice of an enforcement action pursuant to this chapter, the ~~Board~~ Director shall notify, in writing, the locality where the alleged offense has or is taking place of: (i) the name of the alleged violator; (ii) the facts of the alleged violation; (iii) the statutory remedies for the alleged violation; (iv) the availability and timing of any comment period; and (v) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the alleged violation.

F. The comment periods established in subsections B and C shall in no way impact a locality's ability to comment during any additional comment periods established by the Board.

§ 62.1-44.15:5.01. Coordinated review of water resources projects.

A. Applications for water resources projects that require an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § 28.2-1205 shall be submitted and processed through a joint application and review process.

B. The Director and the Commissioner of the Virginia Marine Resources Commission, in consultation with the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Department of Environmental Quality and the Virginia Marine Resources Commission; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments, within 45 days of project notification by the Department of Environmental Quality and the Virginia Marine Resources Commission; (iii) the ~~Board~~Director and the Virginia Marine Resources Commission shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the ~~Board~~Director and the Virginia Marine Resources Commission shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the ~~Board~~Director and the Virginia Marine Resources Commission shall provide each other with notification of their actions and any and all supporting information, including any background materials or exhibits used in the application.

D. If requested by the applicant, the Department of Environmental Quality shall convene a preapplication review panel to assist applicants for water resources projects in the early identification of issues related to the protection of beneficial instream and offstream uses of state waters. The Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, and the Department of Environmental Quality shall participate in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant. However, the participation by these agencies in such a review process shall not limit any authority they may exercise pursuant to state and federal laws or regulations.

§ 62.1-44.15:5.1. General permit for certain water quality improvement activities.

A. The ~~Board~~Director shall ~~coordinate the development of a~~ *adopt and issue* a general permit for activities such as bioengineered streambank stabilization projects and livestock stream crossings that: (i) are coverable by the Nationwide Permit Program (33 C.F.R. Part 330) of the United States Army Corps of Engineers and for which certification has not been waived by the ~~Board~~Director; (ii) are conservation practices designed and supervised by a soil and water conservation district; (iii) meet the design standards of the Department of Conservation and Recreation and the United States Department of Agriculture's Natural Resource Conservation Service; and (iv) are intended to improve water quality. The development of the general permit shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

B. The development of the general permit shall be a coordinated effort between the Department of Environmental Quality, the Virginia Marine Resources Commission and such other agencies as may be needed to develop a single, unified, process that will expedite the implementation of the projects described in subsection A and unify and streamline the permitting process for such projects.

C. A general permit pursuant to this section shall be promulgated as final by July 1, 1998.

§ 62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the ~~Board~~Director has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a Virginia Pollution Abatement permit shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects or for the regularly scheduled renewal of an individual permit for an existing facility. Fees shall be charged for a major modification or reissuance of a permit initiated by the permittee that occurs between permit issuance and the stated expiration date. No fees shall be charged for a modification or amendment made at the ~~Board's~~Director's initiative. In no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	\$24,000

3072	Major Municipal	\$21,300
3073	Minor Industrial with nonstandard	\$10,300
3074	limits	
3075	Minor Industrial with standard limits	\$ 6,600
3076	Minor Municipal greater than 100,000	\$7,500
3077	gallons per day	
3078	Minor Municipal 10,001-100,000 gallons	\$6,000
3079	per day	
3080	Minor Municipal 1,000-10,000 gallons	\$5,400
3081	per day	
3082	Minor Municipal less than 1,000	\$2,000
3083	gallons per day	
3084	General-industrial stormwater	\$ 500
3085	management	
3086	General-stormwater management-phase I	\$ 500
3087	land clearing	
3088	General-stormwater management-phase II	\$ 300
3089	land clearing	
3090	General-other	\$ 600
3091	2. Virginia Pollution Abatement	
3092	Industrial/Wastewater 10 or more	\$15,000
3093	inches per year	
3094	Industrial/Wastewater less than 10	\$10,500
3095	inches per year	
3096	Industrial/Sludge	\$ 7,500
3097	Municipal/Wastewater	\$13,500
3098	Municipal/Sludge	\$ 7,500
3099	General Permit	\$ 600
3100	Other	\$ 750

The fee for the major modification of a permit or certificate that occurs between the permit issuance and expiration dates shall be 50 percent of the maximum amount established by this subsection. No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

B2. Each permitted facility shall pay a permit maintenance fee to the Board by October 1 of each year, not to exceed the following amounts:

3111	Type of Permit/Certificate Category	Maximum Amount
3112	1. Virginia Pollutant Discharge Elimination System	
3113	Major Industrial	\$4,800
3114	Major Municipal greater than 10	\$4,750
3115	million gallons per day	
3116	Major Municipal 2-10 million gallons	\$4,350
3117	per day	
3118	Major Municipal less than 2 million	\$3,850
3119	gallons per day	
3120	Minor Industrial with nonstandard	\$2,040
3121	limits	
3122	Minor Industrial with standard limits	\$1,320
3123	Minor Industrial water treatment system	\$1,200
3124	Minor Municipal greater than 100,000	\$1,500
3125	gallons per day	
3126	Minor Municipal 10,001-100,000 gallons	\$1,200
3127	per day	
3128	Minor Municipal 1,000-10,000 gallons	\$1,080

3129	per day	
3130	Minor Municipal less than 1,000	\$ 400
3131	gallons per day	
3132	2. Virginia Pollution Abatement	
3133	Industrial/Wastewater 10 or more	\$3,000
3134	inches per year	
3135	Industrial/Wastewater less than 10	\$2,100
3136	inches per year	
3137	Industrial/Sludge	\$3,000
3138	Municipal/Wastewater	\$2,700
3139	Municipal/Sludge	\$1,500

3140 An additional permit maintenance fee of \$1,000 shall be collected from facilities in a toxics
 3141 management program and an additional permit maintenance fee shall be collected from facilities that
 3142 have more than five process wastewater discharge outfalls. Permit maintenance fees shall be collected
 3143 annually and shall be remitted by October 1 of each year. For a local government or public service
 3144 authority with permits for multiple facilities in a single jurisdiction, the permit maintenance fees for
 3145 permits held as of April 1, 2004, shall not exceed \$20,000 per year. No permit maintenance fee shall be
 3146 assessed for facilities operating under a general permit or for permits pertaining to a farming operation
 3147 engaged in production for market.

3148 B3. Permit application fees charged for Virginia Water Protection Permits, ground water withdrawal
 3149 permits, and surface water withdrawal permits shall reflect the average time and complexity of
 3150 processing a permit in each of the various categories of permits and permit actions and the size of the
 3151 proposed impact. Only one permit fee shall be assessed for a water protection permit involving elements
 3152 of more than one category of permit fees under this section. The fee shall be assessed based upon the
 3153 primary purpose of the proposed activity. In no instance shall the Board charge a fee for a permit
 3154 pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of
 3155 Engineers-sponsored dredging projects, and in no instance shall the Board exceed the following amounts
 3156 for the processing of each type of permit/certificate category:

3157	Type of Permit	Maximum Amount
3158	1. Virginia Water Protection	
3159	Individual-wetland impacts	\$2,400 plus
3160		\$220 per
3161		1/10 acre of
3162		impact over
3163		two
3164	Individual-minimum	acres, not to
3165		exceed \$60,000
3166	instream flow	\$25,000
3167	Individual-reservoir	\$35,000
3168	Individual-nonmetallic mineral mining	\$7,500
3169	General-less than 1/10 acre impact	\$0
3170	General-1/10 to 1/2 acre impact	\$600
3171	General-greater than 1/2 to one acre	
3172	impact	\$1,200
3173	General-greater than one acre	
3174	to two acres of impact	\$120 per 1/10
3175		acre of impact
3176	2. Ground Water Withdrawal	\$6,000
3177	3. Surface Water Withdrawal	\$12,000

3178 No fees shall be charged for minor modifications or minor amendments to such permits. For the
 3179 purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of
 3180 changes defined by the Board that are made to keep the permit current with routine changes to the
 3181 facility or its operation that do not require extensive review. A minor permit modification or amendment
 3182 does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity
 3183 of the facility to protect human health or the environment.

3184 C. When promulgating regulations establishing permit fees, the Board shall take into account the
 3185 permit fees charged in neighboring states and the importance of not placing existing or prospective
 3186 industries in the Commonwealth at a competitive disadvantage.

3187 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board

shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Board.

F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits that may be required by the federal government and administered by the ~~Board~~Director, or any new permit required pursuant to any law of the Commonwealth.

G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits and shall establish criteria by regulation to provide for reductions in the annual fee amount assessed for facilities accepted into the Department's programs to recognize excellent environmental performance.

§ 62.1-44.15:20. Virginia water protection permit.

A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:

1. Excavate in a wetland;
2. On or after October 1, 2001, conduct the following in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or

3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board;

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

C. Prior to the issuance of a Virginia Water Protection Permit, the ~~Board~~Director shall consult with and give full consideration to the written recommendations of the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services, and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within 45 days after notification by the ~~Board~~Director. If written comments are not submitted by an agency within this time period, the ~~Board~~Director shall assume that the agency has no comments on the proposed permit.

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

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

F. The ~~Board~~Director shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts to wetlands.

§ 62.1-44.15:21. Impacts to wetlands.

A. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the ~~Board~~Director finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

3249 B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation
3250 requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and
3251 may be met through wetland creation or restoration, purchase or use of mitigation bank credits pursuant
3252 to § 62.1-44.15:23, or contribution to a Board-approved fund dedicated to achieving no net loss of
3253 wetland acreage and functions. When utilized in conjunction with creation, restoration, or mitigation
3254 bank credits, compensation may incorporate (i) preservation or restoration of upland buffers adjacent to
3255 wetlands or other state waters or (ii) preservation of wetlands.

3256 C. The ~~Board~~Department shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation
3257 Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating
3258 wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the
3259 U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt
3260 guidance and regulations for review and approval of the geographic area of a delineated wetland. Any
3261 such approval of a delineation shall remain effective for a period of five years; however, if the
3262 ~~Board~~Director issues a permit pursuant to this article for an activity in the delineated wetland within the
3263 five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted
3264 by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of
3265 the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

3266 D. The ~~Board~~Director shall ~~develop~~adopt and issue general permits for such activities in wetlands as
3267 it deems appropriate. General permits shall include such terms and conditions as the ~~Board~~Director
3268 deems necessary to protect state waters and fish and wildlife resources from significant impairment. The
3269 ~~Board~~Director is authorized to waive the requirement for a general permit or deem an activity in
3270 compliance with a general permit when it determines that an isolated wetland is of minimal ecological
3271 value. The ~~Board~~Director shall develop general permits for:

3272 1. Activities causing wetland impacts of less than one-half of an acre;
3273 2. Facilities and activities of utilities and public service companies regulated by the Federal Energy
3274 Regulatory Commission or State Corporation Commission. No ~~Board~~Department action on an individual
3275 or general permit for such facilities shall alter the siting determination made through Federal Energy
3276 Regulatory Commission or State Corporation Commission approval. The Board and the State
3277 Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2,
3278 56-265.2:1, and 56-580 to ensure that consultation on wetland impacts occurs prior to siting
3279 determinations;

3280 3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of
3281 Mines, Minerals and Energy, and sand mining;

3282 4. Virginia Department of Transportation or other linear transportation projects; and
3283 5. Activities governed by nationwide or regional permits approved by the ~~Board~~Director and issued
3284 by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not
3285 be limited to, filing with the ~~Board~~Director any copies of preconstruction notification, postconstruction
3286 report, and certificate of compliance required by the U.S. Army Corps of Engineers.

3287 E. Within 15 days of receipt of an individual permit application, the ~~Board~~Director shall review the
3288 application for completeness and either accept the application or request additional specific information
3289 from the applicant. Within 120 days of receipt of a complete application, the ~~Board~~Director shall issue
3290 the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or
3291 hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct
3292 such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of
3293 the public meeting or hearing.

3294 F. Within 15 days of receipt of a general permit application, the ~~Board~~Director shall review the
3295 application for completeness and either accept the application or request additional specific information
3296 from the applicant. A determination that an application is complete shall not mean the ~~Board~~Director
3297 will issue the permit but means only that the applicant has submitted sufficient information to process
3298 the application. The ~~Board~~Director shall deny, approve, or approve with conditions any application for
3299 coverage under a general permit within 45 days of receipt of a complete preconstruction application. The
3300 application shall be deemed approved if the ~~Board~~Director fails to act within 45 days.

3301 G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities
3302 governed under Chapter 13 (§ 28.2-100 et seq.) of Title 28.2 or normal agricultural activities or normal
3303 silvicultural activities. This section shall also not apply to normal residential gardening, lawn and
3304 landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential
3305 use of property and of minimal ecological impact. The Board shall develop criteria governing this
3306 exemption and shall specifically identify the activities meeting these criteria in its regulations.

3307 § 62.1-44.15:22. Water withdrawals and preservation of instream flow.

3308 A. Conditions contained in a Virginia Water Protection Permit may include but are not limited to the
3309 volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to
3310 protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest

priority uses.

B. Notwithstanding any other provision, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The ~~Board~~Director may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when ~~it~~he finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in § 62.1-44.15:20 C and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of § 62.1-44.15:20 B, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under the other provisions of this section. The application for the Virginia Water Protection Permit shall be subject to public comment for a period established by the ~~Board~~Director. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the ~~Board~~Director approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

§ 62.1-44.15:23. Wetland and stream mitigation banks.

A. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands or streams, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetland or stream mitigation bank in the Commonwealth, or in Maryland on property wholly surrounded by and located in the Potomac River if the mitigation banking instrument provides that the ~~Board~~Director shall have the right to enter and inspect the property and that the mitigation bank instrument and the contract for the purchase or use of such credits may be enforced in the courts of the Commonwealth, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), as the impacted site or in an adjacent cataloging unit within the same river watershed or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this section; (2) the bank is ecologically preferable to practicable onsite and offsite individual mitigation options as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site.

B. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of mitigation banks. The Commonwealth, its officials, agencies, and employees shall not be liable for any action taken under any agreement developed pursuant to such authority.

C. State agencies are authorized to purchase credits from mitigation banks.

§ 62.1-44.16. Industrial wastes.

(1) Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the ~~Board~~Director for the treatment or control of such industrial wastes or other wastes.

3372 Application for such discharge shall be made to the ~~Board~~Director and shall be accompanied by
3373 pertinent plans, specifications, maps, and such other relevant information as may be required, in scope
3374 and details satisfactory to the ~~Board~~Director.

3375 (a) Public notice of every such application shall be given by notice published once a week for two
3376 successive weeks in a newspaper of general circulation in the county or city where the certificate is
3377 applied for or by such other means as the ~~Board~~Director may prescribe.

3378 (b) The ~~Board~~Director shall review the application and the information that accompanies it as soon
3379 as practicable and making a ruling within a period of four months from the date the application is filed
3380 with the ~~Board~~Director approving or disapproving the application and stating the grounds for conditional
3381 approval or disapproval. If the application is approved, the ~~Board~~Director shall grant a certificate for the
3382 discharge of the industrial wastes or other wastes into state waters or for the other alteration of the
3383 physical, chemical or biological properties of state waters, as the case may be. If the application is
3384 disapproved, the ~~Board~~Director shall notify the owner as to what measures, if any, the owner may take
3385 to secure approval.

3386 (2) (a) Any owner operating under a valid certificate issued by the ~~Board~~ who fails to meet water
3387 quality standards established by the Board solely as a result of a change in water quality standards or in
3388 the law shall provide the necessary facilities approved by the ~~Board~~Director within a reasonable time to
3389 meet such new requirements; provided, however, that such facilities shall be reasonable and practicable
3390 of attainment giving consideration to the public interest and the equities of the case. The ~~Board~~Director
3391 may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper
3392 hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such
3393 revocation or amendment of a certificate is mutually agreeable to the ~~Board~~Director and the owner
3394 involved, the hearing and notice may be dispensed with.

3395 (b) The ~~Board~~Director shall revoke the certificate in case of a failure to comply with all such
3396 requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15 (8).
3397 § 62.1-44.17. Other wastes.

3398 (1) Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-44.3,
3399 any owner who causes or permits same to be handled, stored, distributed or produced or any owner
3400 upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon
3401 request of the ~~Board~~Director install facilities approved by the ~~Board~~Director or adopt such measures
3402 approved by the ~~Board~~Director as are necessary to prevent the escape, flow or discharge into any state
3403 waters when the escape, flow or discharge of such other wastes into any state waters would cause
3404 pollution of such state waters.

3405 (2) Any owner under this section requested by the ~~Board~~Director to provide facilities or adopt such
3406 measures shall make application therefor to the ~~Board~~Director. Such application shall be accompanied
3407 by a copy of pertinent plans, specifications, maps, and such other relevant information as may be
3408 required, in scope and details satisfactory to the ~~Board~~Director.

3409 (3) The ~~Board~~Director shall review the application and the information that accompanies it as soon
3410 as practicable and make a ruling within a period of four months from the date the application is filed
3411 with the ~~Board~~Director approving or disapproving the application and stating the grounds for conditional
3412 approval or disapproval. If the application is approved, the ~~Board~~Director shall grant a certificate for the
3413 handling, storing, distribution or production of such other wastes. If the application is disapproved, the
3414 ~~Board~~Director shall notify the owner as to what measures the owner may take to secure approval.

3415 § 62.1-44.17:1.1. Poultry waste management program.

3416 A. As used in this section, unless the context requires a different meaning:

3417 "Commercial poultry processor" means any animal food manufacturer, as defined in § 3.1-884.18,
3418 that contracts with poultry growers for the raising of poultry.

3419 "Confined poultry feeding operation" means any confined animal feeding operation with 200 or more
3420 animal units of poultry.

3421 "Nutrient management plan" means a plan developed or approved by the Department of Conservation
3422 and Recreation that requires proper storage, treatment and management of poultry waste, including dry
3423 litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into
3424 state waters.

3425 "Poultry grower" means any person who owns or operates a confined poultry feeding operation.

3426 B. The Board shall develop a regulatory program governing the storage, treatment and management
3427 of poultry waste, including dry litter, that:

3428 1. Requires the development and implementation of nutrient management plans for any person
3429 owning or operating a confined poultry feeding operation;

3430 2. Provides for waste tracking and accounting; and

3431 3. Ensures proper storage of waste consistent with the terms and provisions of a nutrient management
3432 plan.

3433 C. The program shall include, at a minimum:

1. Provisions for permitting confined poultry feeding operations under a general permit; however, the ~~Board~~ Director may require an individual permit upon determining that an operation is in violation of the program developed under this section;

2. Provisions requiring that:

a. Nitrogen application rates contained in nutrient management plans developed pursuant to this section shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leaching, and volatilization losses, and reduce adverse water quality impacts from nitrogen;

b. For all nutrient management plans developed pursuant to this section after October 1, 2001, phosphorous application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal, as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus;

c. By December 31, 2005, the Department of Conservation and Recreation, in consultation with the Department of Environmental Quality, shall (i) complete an examination of current developments in scientific research and technology that shall include a review of land application of poultry waste, soil nutrient retention capacity, and water quality degradation and (ii) adopt and implement regulatory or other changes, if any, to its nutrient management plan program that it concludes are appropriate as a result of this examination; and

d. Notwithstanding subdivision 2 b, upon the effective date of the Department of Conservation and Recreation's revised regulatory criteria and standards governing phosphorus application rates adopted pursuant to subdivision 2 c, or on October 31, 2005, whichever is later, phosphorous application rates for all nutrient management plans developed pursuant to this section shall conform solely to such regulatory criteria and standards adopted by the Department of Conservation and Recreation to protect water quality or to reduce soil concentrations of phosphorus or phosphorous loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus.

D. The program shall reflect Board consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the Board determines appropriate for the protection of state waters.

E. After October 1, 2001, all persons owning or operating a confined poultry feeding operation shall operate in compliance with the provisions of this section and any regulations promulgated thereunder.

F. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty shall not exceed \$2,500 for any confined animal feeding operation covered by a Virginia Pollution Abatement permit.

G. On or before January 1, 2000, or prior to commencing operations, each commercial poultry processor operating in the Commonwealth shall file with the ~~Board~~ Director a plan under which the processor, either directly or under contract with a third party, shall:

1. Provide technical assistance to the poultry growers with whom it contracts on the proper management and storage of poultry waste in accordance with best management practices;

2. Provide education programs on poultry waste nutrient management for the poultry growers with whom it contracts as well as for poultry litter brokers and persons utilizing poultry waste;

3. Provide a toll-free hotline and advertising program to assist poultry growers with excess amounts of poultry waste to make available such waste to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes;

4. Participate in the development of a poultry waste transportation and alternative use equal matching grant program between the Commonwealth and commercial poultry processors to (i) facilitate the transportation of excess poultry waste in the possession of poultry growers with whom it contracts to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes and (ii) encourage alternative uses to land application of poultry waste;

5. Conduct research on the reduction of phosphorus in poultry waste, innovative best management practices for poultry waste, water quality issues concerning poultry waste, or alternative uses of poultry waste; and

6. Conduct research on and consider implementation of nutrient reduction strategies in the formulation of feed. Such nutrient reduction strategies may include the addition of phytase or other feed additives or modifications to reduce nutrients in poultry waste.

H. Any amendments to the plan required by subsection G shall be filed with the ~~Board~~ Director before they are implemented. After January 1, 2000, each commercial poultry processor shall implement its plan and any amendments thereto. Each commercial poultry processor shall report annually to the ~~Board~~ Director on the activities it has undertaken pursuant to its plan and any amendments thereto. Failure to comply with the provisions of this section or to implement and follow a filed plan or any

3495 amendments thereto shall constitute a violation of this section.

3496 § 62.1-44.18:2. When Director may prohibit discharge; permits.

3497 A. Notwithstanding any other provision of this chapter, the ~~Board~~Director shall have the authority to
3498 prohibit any present or proposed discharge of sewage, industrial wastes, or other wastes into any
3499 sewerage system or treatment works when ~~it~~he has determined that such discharge would threaten the
3500 public health and safety, or would substantially interfere or be incompatible with the treatment works, or
3501 would substantially interfere with usage of state waters as designated by the Board. Before making any
3502 such determination, the ~~Board~~Director shall consult with and receive the advice of the State Department
3503 of Health.

3504 B. The ~~Board~~Director shall have the authority to issue permits which prescribe the terms and
3505 conditions upon which the discharge of sewage, industrial wastes, or other wastes may be made into any
3506 sewerage system or treatment works. The ~~Board~~Director may revoke or amend any such permit for good
3507 cause and after proper hearing. Notwithstanding the requirement for notice and a hearing, the
3508 ~~Board~~Director may, after consultation with the State Department of Health, summarily revoke or amend
3509 such permit when it determines that the permitted discharge poses a threat to the public health and
3510 safety, or is interfering substantially with the treatment works, or is grossly affecting usage of state
3511 waters as designated by the Board. In such case, the ~~Board~~Director shall hold a hearing as soon as
3512 practicable but in no event later than twenty days after the revocation or amendment with reasonable
3513 notice to the owner as to the time and place thereof to affirm, modify, or rescind the summary
3514 revocation or amendment of such permit.

3515 C. Nothing in this section shall limit the authority of the ~~Board~~Director to proceed against such
3516 owner directly under § 62.1-44.23 or § 62.1-44.32 after the ~~Board~~Director has prohibited discharge, or
3517 after the ~~Board~~Director has summarily amended or revoked the permit which authorized the discharge.
3518 If a proposed revocation or amendment of a permit is mutually agreeable to the ~~Board~~Director and the
3519 owner, the hearing and notice thereof may be dispensed with.

3520 § 62.1-44.18:3. Permit for private sewerage facility; financial assurance; violations; waiver of filing.

3521 A. No person shall operate a privately owned sewerage system or sewerage treatment works,
3522 including an LHS 120 facility, that discharges more than 1,000 gallons per day and less than 40,000
3523 gallons per day without obtaining a Virginia Pollutant Discharge Elimination System permit. Any owner
3524 of such a facility shall file with the ~~Board~~Director a plan to abate, control, prevent, remove, or contain
3525 any substantial or imminent threat to public health or the environment that is reasonably likely to occur
3526 if such facility ceases operations. Such plan shall also include a demonstration of financial capability to
3527 implement the plan. Financial capability may be demonstrated by the creation of a trust fund, a
3528 submission of a bond, a corporate guarantee based upon audited financial statements, or such other
3529 instruments as the Board may deem appropriate. The ~~Board~~Director may require that such plan and
3530 instruments be updated as appropriate.

3531 For the purposes of this section, "ceases operation" means to cease conducting the normal operation
3532 of a facility that is regulated under this chapter under circumstances where it would be reasonable to
3533 expect that such operation will not be resumed by the owner at the facility. The term shall not include
3534 the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance
3535 with Board regulations.

3536 Any person who ceases operations and who knowingly and willfully fails to implement a closure
3537 plan or to provide adequate funds for implementation of such plan shall, if such failure results in a
3538 significant harm or an imminent and substantial threat of significant harm to human health or the
3539 environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred
3540 in abating, controlling, preventing, removing, or containing such harm or threat. This shall not in any
3541 way limit other recourse available to the ~~Board~~Director.

3542 Any person who ceases operations and who knowingly and willfully fails to implement a closure
3543 plan or to provide adequate funds for implementation of such plan shall, if such failure results in a
3544 significant harm or an imminent and substantial threat of significant harm to human health or the
3545 environment, be guilty of a Class 4 felony.

3546 B. The ~~Board~~Director may waive the filing of the plan required pursuant to subsection A for any
3547 person who operates a privately owned sewerage system or sewerage treatment works that was permitted
3548 prior to January 1, 2001, and discharges less than 5,000 gallons per day upon a finding that such person
3549 has not violated any regulation or order of the ~~Board~~, any condition of a permit to operate the facility,
3550 or any provision of this chapter for a period of not less than five years; provided, that no waiver may be
3551 approved by the ~~Board~~Director until after the governing body of the locality in which the facility is
3552 located approves the waiver after a public hearing. The ~~Board~~Director may revoke such waiver at any
3553 time for good cause. Any person receiving a waiver who ceases operations shall, if such cessation of
3554 operation results in a significant harm or an imminent and substantial risk of significant harm to human
3555 health and the environment, be guilty of a Class 4 felony and liable to the Commonwealth and any
3556 political subdivision thereof, for the costs incurred in abating, controlling, preventing, removing, or

containing such harm or threat.

C. The Department of Environmental Quality shall promulgate regulations necessary to carry out the provisions of this section. The Department shall identify by January 1, 2001, those facilities regulated under this section.

§ 62.1-44.19. Approval of sewerage systems and sewage treatment works.

A. Before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the ~~Board~~Director an application for a certificate in scope and detail satisfactory to the ~~Board~~Director.

B. If the application involves a system or works from which there is or is to be a discharge to state waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the ~~Board~~Director may prescribe. Before issuing the certificate, the ~~Board~~Director shall consult with and give consideration to the written recommendations of the State Department of Health pertaining to the protection of public health. Upon completion of advertising, the ~~Board~~Director shall determine if the application is complete, and if so, shall act upon it within 21 days of such determination. The ~~Board~~Director shall approve such application if ~~it~~he determines that minimum treatment requirements will be met and that the discharge will not result in violations of water quality standards. If the ~~Board~~Director disapproves the application, ~~it~~he shall state what modifications or changes, if any, will be required for approval.

C. After the certificate has been issued or amended by the ~~Board~~Director, the owner shall acquire from the Department of Environmental Quality (i) authorization to construct the systems or works for which the ~~Board~~Director has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations shall be obtained in accordance with regulations promulgated by the Board.

D. Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Department of Environmental Quality, in accordance with the provisions of subsection C of this section, within a reasonable time to meet such new requirements. The ~~Board~~Director may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least 30 days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the ~~Board~~Director and the owner involved, the hearing and notice may be dispensed with.

E. The ~~Board~~Director shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

§ 62.1-44.19:1. Whenever the State Department of Health or the ~~State Water Control Board~~Director of the Department of Environmental Quality determines that a receiving stream in Virginia Beach is being polluted by the sewage discharge from a private or public sewage utility, and that it is possible to connect such utility to the sewage system of a municipality, sewage treatment authority, or sanitation district, the ~~Board~~Director is hereby empowered to order the utility in Virginia Beach to stop such discharge into the receiving stream. The utility shall discontinue the said discharge either by adequate treatment as determined by the State Department of Health or ~~Water Control Board~~the Director of the Department of Environmental Quality, or by connection to central facilities, either of which is to occur within one year.

§ 62.1-44.19:3.3. (Effective January 1, 2008) Septage disposal.

The ~~Board~~Director 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~~Director. Upon receipt of a satisfactory application, the ~~Board~~Director shall send a copy to the State Board of Health and shall comply with the provisions of § 62.1-44.19:3.4. The State Board of Health shall review the application without delay and advise the ~~Board~~Director within 60 days of the requirements necessary to protect public health. The ~~Board~~Director shall not consider the application complete until comments have been received from the State Board of Health. The ~~Board~~Director shall approve or disapprove the application and issue the permit as appropriate. If the application is disapproved, the ~~Board~~Director shall advise the applicant of the conditions necessary to obtain approval. The ~~Board~~Director may summarily revoke or amend the permit if it determines that the septage disposal is adversely affecting state waters or if the State Board of Health notifies the ~~Board~~Director that public health is being adversely affected.

§ 62.1-44.19:3.4. (Effective January 1, 2008) Notification of local governing bodies.

A. Whenever the Department receives an application for land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the Department 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

3618 discuss technical issues relating to the proposal. The Department shall give notice of the date, time, and
3619 place of the public meeting and a description of the proposal by publication in a newspaper of general
3620 circulation in the city or county where land disposal is to take place. Public notice of the scheduled
3621 meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The ~~Board~~*Director*
3622 shall not consider the application for land disposal to be complete until the public meeting has been held
3623 and comment has been received from the local governing body, or until 30 days have lapsed from the
3624 date of the public meeting. This section shall not apply to applications for septic tank permits.

3625 B. When a farm is to be added to an existing permit authorizing land application of sewage sludge,
3626 the Department shall notify persons residing on property bordering such farm, and shall receive written
3627 comments from those persons for a period not to exceed 30 days. Based upon the written comments, the
3628 Department shall determine whether additional site-specific requirements should be included in the
3629 authorization for land application at the farm.

3630 § 62.1-44.19:8. Control of discharges to toxic-impaired water.

3631 Owners of establishments that discharge toxics to toxic-impaired waters shall evaluate the options
3632 described in §§ 10.1-1425.10 and 10.1-1425.11 in determining the appropriate means to control such
3633 discharges. Prior to issuing or reissuing any permit for the discharge of toxics to toxic-impaired waters,
3634 the ~~Board~~*Director* shall review and consider the owner's evaluation of the options in determining the
3635 conditions and limitations of the permit.

3636 § 62.1-44.19:14. Watershed general permit for nutrients.

3637 A. By January 1, 2006, or as soon thereafter as possible, the ~~Board~~*Director* shall issue a Watershed
3638 General Virginia Pollutant Discharge Elimination System Permit, hereafter referred to as the general
3639 permit, authorizing point source discharges of total nitrogen and total phosphorus to the waters of the
3640 Chesapeake Bay and its tributaries. Except as otherwise provided in this article, the general permit shall
3641 control in lieu of technology-based, water quality-based, and best professional judgment, interim or final
3642 effluent limitations for total nitrogen and total phosphorus in individual Virginia Pollutant Discharge
3643 Elimination System permits for facilities covered by the general permit where the effluent limitations for
3644 total nitrogen and total phosphorus in the individual permits are based upon standards, criteria, waste
3645 load allocations, policy, or guidance established to restore or protect the water quality and beneficial
3646 uses of the Chesapeake Bay or its tidal tributaries.

3647 B. This section shall not be construed to limit or otherwise affect the ~~Board's~~*Director's* authority to
3648 establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total
3649 phosphorus in individual permits where those limitations are necessary to protect local water quality.
3650 The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply
3651 with such local water quality-based limitations.

3652 C. The general permit shall contain the following:

3653 1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility expressed
3654 as annual mass loads. The allocations for each permitted facility shall reflect the applicable individual
3655 water quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of
3656 two or more facilities located in the same tributary may apply for and receive an aggregated waste load
3657 allocation for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple
3658 facilities reflecting the total of the water quality-based total nitrogen and total phosphorus waste load
3659 allocations established for such facilities individually;

3660 2. A schedule requiring compliance with the combined waste load allocations for each tributary as
3661 soon as possible taking into account (i) opportunities to minimize costs to the public or facility owners
3662 by phasing in the implementation of multiple projects; (ii) the availability of required services and
3663 skilled labor; (iii) the availability of funding from the Virginia Water Quality Improvement Fund as
3664 established in § 10.1-2128, the Virginia Water Facilities Revolving Fund as established in § 62.1-225,
3665 and other financing mechanisms; (iv) water quality conditions; and (v) other relevant factors. Following
3666 receipt of the compliance plans required by subdivision C 3, the ~~Board~~*Director* shall reevaluate the
3667 schedule taking into account the information in the compliance plans and the factors in this subdivision,
3668 and may modify the schedule as appropriate;

3669 3. A requirement that within nine months after the initial effective date of the general permit, the
3670 permittees shall either individually or through the Association submit compliance plans to the
3671 ~~Department~~*Director* for approval. The compliance plans shall contain, at a minimum, any capital
3672 projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions
3673 sufficient to comply with the individual and combined waste load allocations of all the permittees in the
3674 tributary. The compliance plans may rely on the exchange of point source credits in accordance with this
3675 article, but not the acquisition of credits through payments authorized by § 62.1-44.19:18, to achieve
3676 compliance with the individual and combined waste load allocations in each tributary. The compliance
3677 plans shall be updated annually and submitted to the ~~Department~~*Director* no later than February 1 of
3678 each year;

3679 4. Such monitoring and reporting requirements as the Board deems necessary to carry out the

provisions of this article;

5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters, to secure general permit coverage by filing a registration statement with the Department within a specified period after each effective date of the general permit. The procedure shall also require any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal waters to secure general permit coverage by filing a registration statement with the ~~Department~~Director at the time he makes application with the ~~Department~~Director for a new discharge or expansion that is subject to an offset or technology-based requirement in § 62.1-44.19:15, and thereafter within a specified period of time after each effective date of the general permit. The general permit shall provide that any facility authorized by a Virginia Pollutant Discharge Elimination System permit and not required by this subdivision to file a registration statement shall be deemed to be covered under the general permit at the time it is issued, and shall file a registration statement with the ~~Department~~Director when required by this section. Owners or operators of facilities that are deemed to be permitted under this section shall have no other obligation under the general permit prior to filing a registration statement and securing coverage under the general permit based upon such registration statement;

6. A procedure for efficiently modifying the lists of facilities covered by the general permit where the modification does not change or otherwise alter any waste load allocation or delivery factor adopted pursuant to the Water Quality Management Planning Regulation (9 VAC 25-270) or its successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or incorporating new waste load allocations or delivery factors, including the opportunity for public notice and comment on such modifications or incorporations; and

7. Such other conditions as the Board deems necessary to carry out the provisions of this chapter and Section 402 of the federal Clean Water Act (33 U.S.C. § 1342).

D. The Board shall maintain and make available to the public a current listing, by tributary, of all permittees and permitted facilities under the general permit, together with each permitted facility's total nitrogen and total phosphorus waste load allocations, and total nitrogen and total phosphorus delivery factors.

E. Except as otherwise provided in this article, in the event that there are conflicting or duplicative conditions contained in the general permit and an individual Virginia Pollutant Discharge Elimination System permit, the conditions in the general permit shall control.

§ 62.1-44.19:15. New or expanded facilities.

A. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under the general permit.

1. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters shall demonstrate to the ~~Department~~Director that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design capacity as of July 1, 2005, and will install state-of-the-art nutrient removal technology at the time of the expansion.

2. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal waters, shall demonstrate to the ~~Department~~Director that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005, and will install, at a minimum, biological nutrient removal technology at the time of the expansion.

3. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day up to and including 99,999 gallons per day, or an equivalent load, directly into tidal or nontidal waters, shall demonstrate to the ~~Department~~Director that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

4. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the ~~Department~~Director that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install (i) at

3741 a minimum, biological nutrient removal technology at any facility authorized to discharge up to and
3742 including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters, or up to
3743 and including 499,999 gallons per day, or an equivalent load, to nontidal waters; and (ii) state-of-the-art
3744 nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or
3745 an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load,
3746 directly into nontidal waters.

3747 B. Waste load allocations required by this section to offset new or increased delivered total nitrogen
3748 and delivered total phosphorus loads shall be acquired in accordance with this subsection.

3749 1. Such allocations may be acquired from one or a combination of the following:

3750 a. Acquisition of all or a portion of the waste load allocations from one or more permitted facilities
3751 in the same tributary;

3752 b. Acquisition of nonpoint source load allocations through the use of best management practices
3753 acquired through a public or private entity acting on behalf of the land owner. Such best management
3754 practices shall achieve reductions beyond those already required by or funded under federal or state law,
3755 or the Virginia tributaries strategies plans, and shall be installed in the same tributary in which the new
3756 or expanded facility is located and included as conditions of the facility's individual Virginia Pollutant
3757 Discharge Elimination System permit; or

3758 c. Acquisition of allocations in accordance with the terms of the general permit or through such other
3759 means as may be approved by the Department on a case-by-case basis.

3760 2. The ~~Board~~Director shall give priority to allocations acquired in accordance with subdivisions B 1
3761 a and B 1 b. The ~~Board~~Director shall approve allocations acquired in accordance with subdivision B 1 c
3762 only after the owner or operator has demonstrated that he has made a good faith effort to acquire
3763 sufficient allocations in accordance with subdivisions B 1 a and B 1 b and that such allocations are not
3764 reasonably available taking into account timing, cost, and other relevant factors.

3765 3. Notwithstanding the priority provisions in subdivision B 2, the ~~Board~~Director may grant a waste
3766 load allocation in accordance with subdivision B 1 c to an owner or operator of a facility authorized by
3767 a Virginia Pollution Abatement permit to land apply domestic sewage if (i) the Virginia Pollution
3768 Abatement permit was issued before July 1, 2005; (ii) the waste load allocation does not exceed such
3769 facility's permitted design capacity as of July 1, 2005; (iii) the waste treated by the existing facility is
3770 going to be treated and discharged pursuant to a Virginia Pollutant Discharge Elimination System permit
3771 for a new discharge; and (iv) the owner or operator installs state-of-the-art nutrient removal technology
3772 at such facility. Such facilities cannot generate credits or waste load allocations, based upon the removal
3773 of land application sites, that can be acquired by other permitted facilities to meet the requirements of
3774 this article.

3775 C. Until such time as the ~~Board~~ Director finds that no allocations are reasonably available in an
3776 individual tributary, the general permit shall provide for the acquisition of allocations through payments
3777 into the Virginia Water Quality Improvement Fund established in § 10.1-2128. Such payments shall be
3778 promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond
3779 those reductions already required by or funded under federal or state law or the Virginia tributaries
3780 strategies plans. The general permit shall base the cost of each pound of allocation on (i) the estimated
3781 cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the
3782 allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost of
3783 reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each
3784 pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the
3785 Board may adjust the cost of each pound of allocation based on current costs and cost estimates.

3786 § 62.1-44.19:16. Technology-based standards and effluent limitations.

3787 A. The Board may establish a technology-based standard less stringent than the applicable standard
3788 specified in § 62.1-44.19:15 based on a demonstration by an owner or operator that the specified
3789 standard is not technically or economically feasible for the affected facility or that the technology-based
3790 standard would require the owner or operator to construct treatment facilities not otherwise necessary to
3791 comply with his waste load allocation without reliance on nutrient credit exchanges pursuant to
3792 § 62.1-44.19:18.

3793 B. The ~~Board~~Director may include technology-based effluent concentration limitations in the
3794 individual permit for any facility that has installed technology for the control of nitrogen and phosphorus
3795 whether by new construction, expansion, or upgrade. Such limitations shall be based upon the
3796 technology installed by the facility and shall be expressed as annual average limitations. Such limitations
3797 shall not affect the generation, acquisition, or exchange of allocations or credits pursuant to this article.

3798 § 62.1-44.20. Right to entry to obtain information, etc.

3799 Any duly authorized agent of the ~~Board~~Director may, at reasonable times and under reasonable
3800 circumstances, enter any establishment or upon any property, public or private, for the purpose of
3801 obtaining information or conducting surveys or investigations necessary in the enforcement of the
3802 provisions of this chapter.

§ 62.1-44.23. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of this chapter may be compelled in a proceeding instituted in any appropriate court by the Board/Director to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

§ 62.1-44.25. Right to hearing.

Any owner under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 aggrieved by any action of the Board/Director taken without a formal hearing, or by inaction of the Board/Director, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such petition before a hearing officer in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Petitions must be filed with the Director within thirty30 days after notice of such action is mailed to such owner by certified mail.

§ 62.1-44.26. Hearings.

A. The hearings held under this chapter may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board as a formal hearing before a hearing officer pursuant to §§ 2.2-4007.01 or 2.2-4020.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. Depositions may be taken and read as in actions at law.

C. The Board/Director shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board/Director in the manner prescribed in § 2.2-4022. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

§ 62.1-44.27. Rules of evidence in hearings.

In all hearings under this chapter:

(1) All relevant and material evidence shall be received, except that (a) the rules relating to privileged communications and privileged topics shall be observed; (b) hearsay evidence shall be received only if the declarant is not readily available as a witness; and (c) secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a witness or document is readily available, the Board or hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence is the more effort should be made to produce the eyewitness or the original document.

(2) All reports of inspectors and subordinates of the Board/Department and other records and documents in the possession of the Board/Department bearing on the case shall be introduced by the Board/Department at the hearing.

(3) Subject to the provisions of subdivision (1) of this section every party shall have the right to cross-examine adverse witnesses and any inspector or subordinate of the Board/Director whose report is in evidence and to submit rebuttal evidence.

(4) The decision of the Board/Director shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.

§ 62.1-44.28. Decisions of the Director in hearings pursuant to §§ 62.1-44.15 and 62.1-44.25.

To be valid and operative, the decision by the Board/Director rendered pursuant to hearings under subdivisions (8a), (8b), and (8c) of §§ 62.1-44.15 and 62.1-44.25 must be reduced to writing and contain the explicit findings of fact and conclusions of law upon which the decision of the Board/Director is based and certified copies thereof must be mailed by certified mail to the parties affected by it.

§ 62.1-44.29. Judicial review.

Any owner aggrieved by, or any person who has participated, in person or by submittal of written comments, in the public comment process related to, a final decision of the Board under §§ 62.1-44.15 (5), 62.1-44.15 (8a), (8b), and (8c), 62.1-44.15:20, 62.1-44.15:21, 62.1-44.15:22, 62.1-44.15:23, 62.1-44.16, 62.1-44.17, 62.1-44.19 or § 62.1-44.25, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

§ 62.1-44.31. Violation of special order or certificate or failure to cooperate with Director.

It shall be unlawful for any owner to fail to comply with any special order adopted by the Board,

3864 which has become final under the provisions of this chapter, or to fail to comply with a pretreatment
3865 condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or
3866 to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage,
3867 industrial waste or other waste in violation of any condition contained in a certificate issued by the
3868 Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information,
3869 plans, specifications or other data reasonably necessary and pertinent required by the Board under this
3870 chapter.

3871 For the purpose of this section, the term "owner" shall mean, in addition to the definition contained
3872 in § 62.1-44.3, any responsible corporate officer so designated in the applicable discharge permit.
3873 § 62.1-44.32. Penalties.

3874 (a) Any person who violates any provision of this chapter, or who fails, neglects, or refuses to
3875 comply with any ~~order~~ regulation of the Board or order of the Director, or order of a court, issued as
3876 herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the
3877 discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
3878 Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the
3879 Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding
3880 penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of
3881 Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of
3882 approval relating to or issued under those articles.

3883 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the
3884 treasury of the county, city, or town in which the violation occurred, to be used for the purpose of
3885 abating environmental pollution therein in such manner as the court may, by order, direct, except that
3886 where the owner in violation is such county, city or town itself, or its agent, the court shall direct such
3887 penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia
3888 Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties
3889 assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or
3890 judicial order, or term or condition of approval relating to or issued under those articles.

3891 In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its
3892 agent, may initiate a civil action against any user or users of a waste water treatment facility to recover
3893 that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of
3894 such user or users in violation of any applicable federal, state, or local requirements.

3895 (b) Any person who willfully or negligently violates any provision of this chapter, any regulation or
3896 ~~order~~ of the Board or order of the Director, any condition of a certificate or any order of a court shall
3897 be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of
3898 not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any
3899 provision of this chapter, any regulation or ~~order~~ of the Board or order of the Director, any condition of
3900 a certificate or any order of a court issued as herein provided, or who knowingly makes any false
3901 statement in any form required to be submitted under this chapter or knowingly renders inaccurate any
3902 monitoring device or method required to be maintained under this chapter, shall be guilty of a felony
3903 punishable by a term of imprisonment of not less than one year nor more than three years, or in the
3904 discretion of the jury or the court trying the case without a jury, confinement in jail for not more than
3905 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant
3906 that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay
3907 a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate
3908 offense.

3909 (c) Any person who knowingly violates any provision of this chapter, and who knows at that time
3910 that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon
3911 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor
3912 more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an
3913 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not
3914 exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the
3915 defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine
3916 and imprisonment for any subsequent conviction of the same person under this subsection.

3917 (d) Criminal prosecution under this section shall be commenced within three years of discovery of
3918 the offense, notwithstanding the limitations provided in any other statute.

3919 § 62.1-44.34:15.1. Regulations for aboveground storage tanks.

3920 The Board shall adopt regulations and develop procedures necessary to prevent pollution of state
3921 waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground
3922 storage tanks. These regulations shall be developed in substantial conformity with the current codes and
3923 standards recommended by the National Fire Protection Association. To the extent that they are
3924 consistent with the Board's program, the Board shall incorporate accepted industry practices contained in
3925 the American Petroleum Institute publications and other accepted industry standards when developing the

regulations contemplated by this section. The regulations shall provide the following:

1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board) and formal tank inspections every five years in accordance with accepted industry practices and procedures approved by the Board. Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the Board;

c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the Board;

d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum by-product contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board). Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures;

c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every five years or equivalent measures established by the Board; and

d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements developed in accordance with subdivision 1 of this section.

3. For aboveground storage tanks existing prior to the effective date of the regulations required by this section, when the results of a tank inspection indicate the need for replacement of the tank bottom, the operator of a facility shall install a release prevention barrier (RPB) capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. The decision to replace an existing tank bottom shall be based on the criteria established by regulations pursuant to this section.

4. The Board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to prevent oil discharges that have been proven in

3987 accordance with accepted industry practices and shown to be cost-effective.

3988 5. The Board shall establish criteria for ~~granting the Director to grant~~ variances from the
3989 requirements of the regulations promulgated pursuant to this section (i) on a case-by-case basis and (ii)
3990 by regulation for categories of aboveground storage tanks, except that the ~~Board~~Director shall not grant
3991 a variance that would result in an unreasonable risk to the public health or the environment. Variances
3992 by regulation shall be based on relevant factors such as tank size, use, and location. Within ~~thirty~~30
3993 days after the grant of a variance for a facility, the ~~Board~~Director shall send written notification of the
3994 variance to the chief administrative officer of the locality in which the facility is located.

3995 § 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge.

3996 A. The discharge of oil into or upon state waters, lands, or storm drain systems within the
3997 Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters
3998 include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of
3999 the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining
4000 shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon
4001 adjoining shorelines.

4002 B. Any person discharging or causing or permitting a discharge of oil into or upon state waters,
4003 lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may
4004 reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a
4005 substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there
4006 is a discharge of oil into or upon state waters, lands, or storm drain systems, or from which there is a
4007 discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems,
4008 or from which there is a substantial threat of such discharge shall, immediately upon learning of such
4009 discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this
4010 article or take such other action as may be deemed necessary in the judgment of the Board to contain
4011 and clean up such discharge or threat of such discharge. In the event of such discharge or threat of
4012 discharge, if it cannot be determined immediately the person responsible therefor, or if the person is
4013 unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board
4014 may take such action as is necessary to contain and clean up the discharge or threat of discharge,
4015 including the engagement of contractors or other competent persons.

4016 C. Any person discharging or causing or permitting a discharge of oil into or upon state waters,
4017 lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a
4018 discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems,
4019 or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle
4020 or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems
4021 within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected
4022 to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such
4023 discharge, shall be liable to:

4024 1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of
4025 investigation, containment and cleanup incurred as a result of such discharge or threat of discharge,
4026 including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses
4027 directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating
4028 damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused
4029 by such discharge or threat of discharge;

4030 2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of
4031 the Commonwealth of Virginia or the political subdivision caused by such discharge;

4032 3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other
4033 revenues caused by such discharge, and compensation for the loss of any natural resources that cannot
4034 be restocked, replenished or restored; and

4035 4. Any person for injury or damage to person or property, real or personal, loss of income, loss of
4036 the means of producing income, or loss of the use of the damaged property for recreational, commercial,
4037 industrial, agricultural or other reasonable uses, caused by such discharge.

4038 D. Notwithstanding any other provision of law, a person who renders assistance in containment and
4039 cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under
4040 this section for damages for personal injury and wrongful death caused by that person's negligence, and
4041 for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for
4042 any other damages or costs and expenses of containment and cleanup under this section that are caused
4043 by the acts or omissions of such person in rendering such assistance; however, such liability provision
4044 shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state
4045 waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may
4046 reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a
4047 substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the
4048 right of any person who renders such assistance to reimbursement for the costs of the containment and

cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge. In addition, a person, other than an operator, who voluntarily, without compensation, and upon the request of a governmental agency, assists in the containment or cleanup of a discharge of oil, shall not be liable for any civil damages resulting from any act or omission on his part in the course of his rendering such assistance in good faith; nor shall any person or any organization exempt from income taxation under § 501 (c) (3) of the Internal Revenue Code who notifies or assists in notifying the membership of such organization to assist in the containment or cleanup of a discharge of oil, voluntarily, without compensation, and upon the request of a government agency, be liable for any civil damages resulting from such notification rendered in good faith.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; however, this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:16 or \$10,000,000, whichever is greater; however, there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section.

I. An operator that incurs costs pursuant to subsection B shall have the right to recover all or part of such costs in an action for contribution against any person or persons whose acts or omissions caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs among the parties using such equitable factors as the court deems appropriate.

J. Any person or operator who pays costs or damages pursuant to subsection C shall have the right to recover all or part of such costs or damages in an action for contribution against any person or persons whose act or omission has caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs or damages among the parties using such equitable factors as the court deems appropriate.

§ 62.1-44.34:20. Enforcement and penalties.

A. Upon a finding of a violation of this article or a regulation or term or condition of approval issued pursuant to this article, the ~~Board~~Director is authorized to issue a special order requiring any person to cease and desist from causing or permitting such violation or requiring any person to comply with any such provision, regulation or term or condition of approval. Such special orders shall be issued only after notice and an opportunity for hearing except that, if the ~~Board~~Director finds that any discharge in violation of this article poses a serious threat to (i) the public health, safety or welfare or the health of animals, fish, botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the ~~Board~~Director may issue, without advance notice or hearing, an emergency special order requiring the operator of any facility, vehicle or vessel to cease such discharge immediately, to implement any applicable contingency plan and to effect containment and cleanup. Such emergency special order may also require the operator of a facility to modify or cease regular operation of the facility, or any portion thereof, until the ~~Board~~Director determines that continuing regular operation of the facility, or such portion thereof, will not pose a substantial threat of additional or continued discharges. The ~~Board~~Director shall affirm, modify, amend or cancel any such emergency order after providing notice and opportunity for hearing to the operator charged with the violation. The notice of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued such a special order or an emergency special order is not

4110 complying with the terms thereof, the ~~Board~~Director may proceed in accordance with subsection B of
4111 this section, and where the order is based on a finding of an imminent and substantial danger, the court
4112 shall issue an injunction compelling compliance with the emergency special order pending a hearing by
4113 the ~~Board~~Director. If an emergency special order requires modification or cessation of operations, the
4114 ~~Board~~Director shall provide an opportunity for a hearing within 48 hours of the issuance of the
4115 injunction.

4116 B. In the event of a violation of this article or a regulation, administrative or judicial order, or term
4117 or condition of approval issued under this article, or in the event of failure to comply with a special
4118 order issued by the ~~Board~~Director pursuant to this section, the ~~Board~~Director is authorized to proceed
4119 by civil action to obtain an injunction of such violation, to obtain such affirmative equitable relief as is
4120 appropriate and to recover all costs, damages and civil penalties resulting from such violation or failure
4121 to comply. The ~~Board~~Department shall be entitled to an award of reasonable attorneys' fees and costs in
4122 any action in which it is a prevailing party.

4123 C. Any person who violates or causes or permits to be violated a provision of this article, or a
4124 regulation, administrative or judicial order, or term or condition of approval issued under this article,
4125 shall be subject to a civil penalty for each such violation as follows:

4126 1. For failing to obtain approval of an oil discharge contingency plan as required by § 62.1-44.34:15,
4127 not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per day for each day of
4128 violation thereafter;

4129 2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:16, not less
4130 than \$1,000 nor more than \$100,000 for the initial violation, and \$5,000 per day for each day of
4131 violation thereafter;

4132 3. For discharging or causing or permitting a discharge of oil into or upon state waters, or owning or
4133 operating any facility, vessel or vehicle from which such discharge originates in violation of
4134 § 62.1-44.34:18, up to \$100 per gallon of oil discharged;

4135 4. For failing to cooperate in containment and cleanup of a discharge as required by § 62.1-44.34:18
4136 or for failing to report a discharge as required by § 62.1-44.34:19, not less than \$1,000 nor more than
4137 \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter; and

4138 5. For violating or causing or permitting to be violated any other provision of this article, or a
4139 regulation, administrative or judicial order, or term or condition of approval issued under this article, up
4140 to \$32,500 for each violation. Each day of violation of each requirement shall constitute a separate
4141 offense.

4142 D. Civil penalties may be assessed under this article either by a court in an action brought by the
4143 ~~Board~~Director pursuant to this section, as specified in § 62.1-44.15, or with the consent of the person
4144 charged, in a special order issued by the ~~Board~~Director. All penalties shall be paid into the state
4145 treasury and deposited by the State Treasurer into the Virginia Underground Petroleum Storage Tank
4146 Fund as established in § 62.1-44.34:11. In determining the amount of any penalty, consideration shall be
4147 given to the willfulness of the violation, any history of noncompliance, the actions of the person in
4148 reporting, containing and cleaning up any discharge or threat of discharge, the damage or injury to state
4149 waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature and
4150 degree of injury to or interference with general health, welfare and property, and the available
4151 technology for preventing, containing, reducing or eliminating the discharge.

4152 E. Any person who knowingly violates, or causes or permits to be violated, a provision of this
4153 article, or a regulation, administrative or judicial order, or term or condition of approval issued under
4154 this article shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12
4155 months and a fine of not more than \$100,000, either or both. Any person who knowingly or willfully
4156 makes any false statement, representation or certification in any application, record, report, plan or other
4157 document filed or required to be maintained by this article or by administrative or judicial order issued
4158 under this article shall be guilty of a felony punishable by a term of imprisonment of not less than one
4159 nor more than three years and a fine of not more than \$100,000, either or both. In the case of a
4160 discharge of oil into or upon state waters:

4161 1. Any person who negligently discharges or negligently causes or permits such discharge shall be
4162 guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of
4163 not more than \$50,000, either or both.

4164 2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits
4165 such discharge shall be guilty of a felony punishable by a term of imprisonment of not less than one
4166 year nor more than 10 years and a fine of not more than \$100,000, either or both.

4167 F. Each day of violation of each requirement shall constitute a separate offense. In the event the
4168 violation of this article follows a prior felony conviction under subdivision E 2 of this section, such
4169 violation shall constitute a felony and shall be punishable by a term of imprisonment of not less than
4170 two years nor more than 10 years and a fine of not more than \$200,000, either or both.

4171 G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or

judicial order, or term or condition of approval issued under this article, a defendant who is not an individual shall be sentenced to pay a fine not exceeding the greater of:

1. \$1 million; or
2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of the offense.

H. Any tank vessel entering upon state waters which fails to provide evidence of financial responsibility required by § 62.1-44.34:16, and any vessel from which oil is discharged into or upon state waters, may be detained and held as security for payment to the Commonwealth of any damages or penalties assessed under this section. Such damages and penalties shall constitute a lien on the vessel and the lien shall secure all costs of containment and cleanup, damages, fines and penalties, as the case may be, for which the operator may be liable. The vessel shall be released upon posting of a bond with surety in the maximum amount of such damages or penalties.

§ 62.1-44.34:23. Exceptions.

A. Nothing in this article shall apply to: (i) normal discharges from properly functioning vehicles and equipment, marine engines, outboard motors or hydroelectric facilities; (ii) accidental discharges from farm vehicles or noncommercial vehicles; (iii) accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of 150 gallons or less; (iv) discharges authorized by a valid permit issued by the Board pursuant to § 62.1-44.15 (5) or by the United States Environmental Protection Agency; (v) underground storage tanks regulated under a state program; (vi) releases from underground storage tanks as defined in § 62.1-44.34:8, regardless of when the release occurred; (vii) discharges of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance with federal pipeline safety regulations; or (viii) discharges authorized by the federal on-scene coordinator and the Executive Director or his designee in connection with activities related to the recovery of spilled oil where such activities are undertaken to minimize overall environmental damage due to an oil spill into or on state waters. However, the exception provided in clause (viii) shall in no way reduce the liability of the person who initially spilled the oil which is being recovered.

B. Notwithstanding the exemption set forth in clause (vi) of subsection A of this section, a political subdivision may recover pursuant to subsection C of § 62.1-44.34:18 for a discharge of oil into or upon state waters, lands, or storm drain systems from an underground storage tank regulated under a state program at facilities with an aggregate capacity of one million gallons or greater.

§ 62.1-242. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board.

"Director" means the Director of the Department of Environmental Quality.

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Surface water withdrawal permit" means a document issued by the ~~Board~~ Director evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the Board has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.

A. No surface water withdrawal permit shall be required for (i) any nonconsumptive use, (ii) any water withdrawal of less than 300,000 gallons in any single month, (iii) any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps, (iv) any withdrawal in any area which has not been declared a surface water management area, or (v) any withdrawal from a wastewater treatment system permitted by the ~~State Water Control Board~~ Director or the Department of Mines, Minerals and Energy.

B. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared

4233 surface water management area before the daily rate of any such existing withdrawal is increased
4234 beyond the maximum daily withdrawal made before July 1, 1989.

4235 2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal
4236 has received a § 401 certification from the ~~State Water Control Board~~ *BoardDirector* pursuant to the
4237 requirements of the Clean Water Act to install any necessary withdrawal structures and make such
4238 withdrawal; however, a permit shall be required in any surface water management area before any such
4239 withdrawal is increased beyond the amount authorized by the said certification.

4240 3. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for
4241 public water supply purposes; however, during periods when permit conditions in a surface water
4242 management area are in force under regulations adopted by the Board pursuant to § 62.1-249, and when
4243 the rate of flow of natural surface water into the impoundment is equal to or less than the average flow
4244 of natural surface water at that location, the ~~Board~~ *BoardDirector* may require the release of water from the
4245 impoundment at a rate not exceeding the existing rate of flow of natural surface water into the
4246 impoundment.

4247 Withdrawals by a political subdivision or investor-owned water company permitted by the
4248 Department of Health shall be affected by subdivision 3 of subsection B only at the option of that
4249 political subdivision or investor-owned water company.

4250 To qualify for any exemption in subsection B of this section, the political subdivision making the
4251 withdrawal, or the political subdivision served by an authority making the withdrawal, shall have
4252 instituted a water conservation program approved by the ~~Board~~ *BoardDirector* which includes: (i) use of water
4253 saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide
4254 Building Code; (ii) a water loss reduction program; (iii) a water use education program; and (iv)
4255 ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with
4256 penalties, during water shortage emergencies. The ~~Board~~ *BoardDirector* shall review all such water
4257 conservation programs to ensure compliance with (i) through (iv) of this paragraph.

4258 C. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal
4259 permit for:

4260 1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared
4261 surface water management area before the daily rate of any such existing withdrawal is increased
4262 beyond the maximum daily withdrawal made before July 1, 1989.

4263 2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal
4264 has received a § 401 certification from the ~~State Water Control Board~~ *BoardDirector* pursuant to the
4265 requirements of the Clean Water Act to install any necessary withdrawal structures and make such
4266 withdrawal; however, a permit shall be required in any surface water management area before any such
4267 withdrawal is increased beyond the amount authorized by the said certification.

4268 To qualify for either exemption in subsection C of this section, the beneficial consumptive user shall
4269 have instituted a water management program approved by the ~~Board~~ *BoardDirector* which includes: (i) use of
4270 water-saving plumbing; (ii) a water loss reduction program; (iii) a water use education program; and (iv)
4271 mandatory reductions during water shortage emergencies. However, these reductions shall be on an
4272 equitable basis with other uses exempted under subsection B of this section. The ~~Board~~ *BoardDirector* shall
4273 review all such water management programs to ensure compliance with (i) through (iv) of this
4274 paragraph.

4275 D. The ~~Board~~ *BoardDirector* shall issue certificates for any withdrawals exempted pursuant to subsections B
4276 and C of this section. Such certificates shall include conservation or management programs as conditions
4277 thereof.

4278 § 62.1-244. Director may require information from persons withdrawing surface water.

4279 The ~~Board~~ *BoardDirector* may require any person withdrawing surface water for any purpose in any surface
4280 water management area to furnish information with regard to such surface water withdrawal and the use
4281 thereof.

4282 § 62.1-245. Agreements among persons withdrawing surface water.

4283 In the administration of this chapter, the ~~Board~~ *BoardDirector* shall encourage, promote and recognize
4284 voluntary agreements among persons withdrawing surface water in the same surface water management
4285 area. When the ~~Board~~ *BoardDirector* finds that any such agreement, executed in writing and filed with the
4286 ~~Board~~ *BoardDirector*, is consistent with the intent, purposes and requirements of this chapter, the
4287 ~~Board~~ *BoardDirector* shall approve the agreement following a public hearing. The ~~Board~~ *BoardDirector* shall provide
4288 at least sixty days' notice of the public hearing to the public in general and individually to those persons
4289 withdrawing surface water in the surface water management area who are not parties to the agreement,
4290 and shall make a good faith effort to so notify recreational user groups, conservation organizations and
4291 fisheries management agencies. The ~~Board~~ *BoardDirector* shall be a party to the agreement. The agreement,
4292 until terminated, shall control in lieu of a formal order, rule, regulation or permit issued by the ~~Board~~
4293 under the provisions of this chapter, and shall be deemed to be a case decision under the Administrative
4294 Process Act (§ 2.2-4000 et seq.). Any agreement shall specify the amount of water affected thereby.

Any agreement approved by the ~~Board~~ *Director* may include conditions which can result in its amendment or termination by the ~~Board~~ *Director*, following a public hearing, if the ~~Board~~ *Director* finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions may include (i) a determination by the ~~Board~~ *Director* that the agreement originally approved by the ~~Board~~ will not further the purposes of this chapter, (ii) a determination by the ~~Board~~ *Director* that circumstances have changed such that the agreement originally approved by the ~~Board~~ will no longer further the purposes by this chapter, or (iii) one or more parties to the agreement is not fulfilling its commitments under the agreement. The ~~Board~~ *Director* shall provide at least ~~sixty~~ 60 days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

§ 62.1-247. Use of surface water in surface water management area.

After an area has been declared a surface water management area by an order of the Board, no person shall withdraw or attempt to withdraw any surface water, except for withdrawals exempted under § 62.1-243 or made pursuant to a voluntary agreement approved by the ~~Board~~ *Director* pursuant to § 62.1-245, without a surface water withdrawal permit issued by the Board.

§ 62.1-248. Permits.

A. Any permit issued by the ~~Board~~ *Director* shall include a flow requirement appropriate for the protection of beneficial instream uses. In determining the level of flow in need of protection, the ~~Board~~ *Director* shall consider, among other things, recreational and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the ~~Board~~ *Director* shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigation measures, and the socioeconomic impacts of such restrictions on the potentially affected water users and on the citizens of the Commonwealth in general.

In ~~its~~ *the* permit decision, the ~~Board~~ *Director* shall attempt to balance offstream and instream water uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-using group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

Permit conditions may include, but are not limited to, the following: (i) maximum amounts which may be withdrawn, (ii) times of the day or year during which withdrawals may occur, and (iii) requirements for voluntary and mandatory conservation measures.

B. In considering whether to issue, modify, revoke, or deny a permit under this section, the ~~Board~~ *Director* shall consider:

1. The number of persons using a stream and the object, extent and necessity of their respective withdrawals or uses;

2. The nature and size of the stream;

3. The types of businesses or activities to which the various uses are related;

4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream water uses;

5. The effects on beneficial uses; and

6. Any other relevant factors.

C. Permits shall be transferable among users, subject to approval by the ~~Board~~ *Director*.

D. In developing regulations governing the issuance of permits, the Board shall prioritize among types of users. Domestic and existing uses shall be given the highest priority in the issuance of permits for other beneficial uses. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean Water Act.

§ 62.1-249. Applicability of permit conditions.

A. The Board by regulation shall determine when the level of flow is such that permit conditions in a surface water management area are in force. As a part of this regulation, the Board shall adopt a reasonable system of water-use classification according to classes of beneficial uses. The Board may include ~~provisions for~~ *criteria for the Director to use in granting* variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

B. The regulations may provide that the ~~Board, or the Board's Executive~~ Director, by order may declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

C. The Board may impose such restrictions on one or more classes of water uses as may be

necessary to protect the surface water resources of the area from serious harm.

D. Regulations shall provide for the means for a declaration of water shortage to be rescinded.

E. When permit conditions become applicable in a surface water management area, the ~~Board~~Director shall notify each permittee by mail or cause notice thereof to be published in a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all permit holders in the area.

§ 62.1-250. State agency review.

Prior to the creation of a surface water management area, or the issuance of a permit within one, the ~~Board~~Director shall consult and cooperate with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, and any other interested and affected agencies. Such consultation shall include the need for development of a means in the surface water management area for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the ~~Board~~Director. The ~~Board~~Director shall assume that if written comments are not submitted by an agency, within the time period, the agency has no comments on the proposed permits.

§ 62.1-251. Cancellation or suspension of permit.

Whenever the ~~Board~~Director finds that the holder of a permit is willfully violating any provision of such permit or any other provision of this chapter, the ~~Board~~Director may cancel or suspend the permit or impose conditions on its future use in order to prevent future violations. The finding of the ~~Board~~Director shall be made in accordance with the Administrative Process Act, § 2.2-4000 et seq.

§ 62.1-252. Penalties; injunctions.

A. Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed \$1,000 for each violation. Each day of violation shall constitute a separate offense.

B. With the consent of any person in violation of this chapter, the ~~Board~~Director may provide, in an order issued by the ~~Board~~Director against the person, for the payment of civil charges. These charges shall be in lieu of civil charges imposed by the court.

C. In order to protect the public interest of the Commonwealth, the ~~Board~~Director may seek injunctive relief against any person violating any provision of this chapter.

D. The civil penalties and civil charges provided for in this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Director" means the Director of the Department of Environmental Quality.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the ~~Board~~Director permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

§ 62.1-256. Duties of Board and Director.

The Board and Director shall have the following duties and powers:

1. ~~The~~Director is authorized to issue ground water withdrawal permits in accordance with regulations adopted by the Board;

2. ~~The~~Director is authorized to issue special orders as provided in § 62.1-268;

3. ~~The~~Board is authorized to study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;

4. ~~The~~Board is authorized to require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the ~~Board~~Director such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines, Minerals and Energy;

5. ~~The~~*The Board is authorized to prescribe and the Director is authorized to enforce* requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;

6. ~~The~~*The Director is authorized to enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish*~~adopted, issued, or established~~ to carry out the provisions of this chapter;

7. ~~The~~*The Director is authorized to issue special exceptions pursuant to § 62.1-267; and*

8. ~~The~~*The Board is authorized to adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and.*

9. ~~To~~ delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § 62.1-268.

§ 62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) withdrawals of less than 300,000 gallons a month; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests; (vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals and Energy; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the ~~Board~~*Director*.

§ 62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.

A. Persons holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to said certificate or permit shall file an application for a ground water withdrawal permit on or before December 31, 1992, in order to obtain a permit for withdrawals. The ~~Board~~*Director* shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1987, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the permit shall be issued for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1980, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons holding a certificate of ground water right issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to the certificate shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The ~~Board~~*Director* shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1988, and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons holding a permit to withdraw ground water issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas shall not be required to apply for a ground water withdrawal permit until the expiration of the term of the permit to withdraw ground water as provided in subsection C of § 62.1-266, and may withdraw ground water pursuant to the terms and conditions of the permit to withdraw ground water. Such persons may apply for a ground water withdrawal permit allowing greater withdrawals of ground water than are allowed under an existing permit, and the ~~Board~~*Director* in ~~its~~*this* discretion may issue a permit for such greater withdrawals, upon consideration of the factors set forth in § 62.1-263.

D. Persons holding a certificate of ground water right issued prior to July 1, 1992, or a permit to

4479 withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore
4480 Groundwater Management Areas, who have not withdrawn ground water prior to July 1, 1992, may
4481 initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or
4482 permit. The persons shall file an application for a ground water withdrawal permit on or before
4483 December 31, 1995, and may continue withdrawing ground water under the terms and conditions of
4484 their certificate or permit until the required ground water withdrawal permit application is acted on by
4485 the ~~Board~~Director, provided that the ground water withdrawal permit application is filed on or before
4486 December 31, 1995. The ~~Board~~Director shall issue a ground water withdrawal permit for the total
4487 amount of ground water withdrawn and applied to a beneficial use during any consecutive twelve-month
4488 period between July 1, 1992, and June 30, 1995, together with (i) such savings as can be demonstrated
4489 to have been achieved through water conservation and (ii) such amount as the ~~Board~~Director in ~~its~~this
4490 discretion deems appropriate upon consideration of the factors set forth in § 62.1-263. This subsection
4491 shall not apply to a political subdivision, or an authority serving a political subdivision, holding a permit
4492 or certificate for a public water supply well for supplemental water during drought conditions, which
4493 shall apply for a ground water withdrawal permit as provided in § 62.1-265.

4494 E. Persons withdrawing ground water for agricultural or livestock watering purposes in the Eastern
4495 Virginia or Eastern Shore Groundwater Management Areas on or before July 1, 1992, shall file an
4496 application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a
4497 permit for withdrawals. The ~~Board~~Director shall issue ground water withdrawal permits for the total
4498 amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1983
4499 and June 30, 1993, together with such savings as can be demonstrated to have been achieved through
4500 water conservation.

4501 F. Persons withdrawing ground water for agricultural or livestock watering purposes, or pursuant to
4502 certificates of ground water right or permits to withdraw ground water issued prior to July 1, 1992, in
4503 the Eastern Virginia or Eastern Shore Groundwater Management Areas, may continue such withdrawal
4504 until the required permit application is acted on by the ~~Board~~Director, provided that the permit
4505 application is filed by the appropriate deadline.

4506 G. Persons applying for a ground water withdrawal permit may request that they be permitted to
4507 withdraw more ground water than the amount to which they may be entitled based on their historic
4508 usage and water conservation as set forth in this section. The ~~Board~~Director in ~~its~~this discretion may
4509 issue a permit for a greater amount than that which is based on historic usage and water conservation,
4510 upon consideration of the factors set forth in § 62.1-263.

4511 H. Failure by any person covered by the provisions of subsection A, B, D or E to file an application
4512 for a ground water withdrawal permit prior to the expiration of the applicable period creates a
4513 presumption that any claim to withdraw ground water based on history of usage has been abandoned. In
4514 reviewing any application for a ground water withdrawal permit subsequently made by such a person,
4515 the ~~Board~~Director shall consider the factors set forth in § 62.1-263.

4516 § 62.1-261. Permits for existing ground water withdrawals in newly established ground water
4517 management areas.

4518 A. Persons withdrawing ground water in any area declared a ground water management area on or
4519 after July 1, 1992, shall file an application within six months after the ground water management area
4520 has been declared in order to obtain a permit for withdrawals. The ~~Board~~Director shall issue permits for
4521 the total amount of ground water withdrawn during any consecutive twelve-month period in the five
4522 years preceding said declaration, together with such savings as can be demonstrated to have been
4523 achieved through water conservation.

4524 B. Persons withdrawing ground water for agricultural or livestock watering purposes in any area
4525 declared a ground water management area on or after July 1, 1992, shall file an application within six
4526 months after the ground water management area has been declared in order to obtain a permit for
4527 withdrawals. The ~~Board~~Director shall issue permits for the total amount of ground water withdrawn
4528 during any consecutive twelve-month period in the ten-year period preceding such declaration, together
4529 with such savings as can be demonstrated to have been achieved through water conservation.

4530 C. Persons withdrawing ground water in any area declared a ground water management area on or
4531 after July 1, 1992, may continue such withdrawal until the required permit application is acted on by the
4532 ~~Board~~Director, provided that the permit application is filed within the six-month period following the
4533 declaration.

4534 D. Persons applying for a ground water withdrawal permit issued pursuant to this section may
4535 request that they be permitted to withdraw more ground water than the amount to which they may be
4536 entitled based on their historic usage as set forth in this section. The ~~Board~~Director in ~~its~~this discretion
4537 may issue a permit for a greater amount than that which is based on historic usage, upon consideration
4538 of factors set forth in § 62.1-263.

4539 E. Failure by any person covered by the provisions of subsection A or B to file an application for a
4540 ground water withdrawal permit within the six months following the declaration of the ground water

management area creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the ~~Board~~Director shall consider the factors set forth in § 62.1-263.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ 62.1-260 and 62.1-261, shall include a water conservation and management plan approved by the ~~Board~~Director. A water conservation and management plan shall include: (i) use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; and (iv) mandatory reductions during water-shortage emergencies including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The ~~Board~~Director shall approve all water conservation plans in compliance with subdivisions (i) through (iv) of this section.

§ 62.1-263. Criteria for issuance of permits.

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the ~~Board~~Director may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the ~~Board~~Director shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses.

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the ~~Board~~Director shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.

§ 62.1-264. Permits for public water supplies.

To ensure that any ground water withdrawal permit issued for a public water supply does not impact a waterworks operation permit issued pursuant to § 32.1-172, the maximum permitted daily withdrawal shall be set by the ~~Board~~Director at a level consistent with the requirements and conditions contained in the waterworks operation permit. This section shall not limit the authority of the ~~Board~~Director to reduce or eliminate ground water withdrawals by a waterworks if necessary to protect human health or the environment. ~~In The Board, in promulgating regulations to implement this section, and the Director,~~ in administering such regulations and this chapter, the ~~Board~~ shall consult and cooperate with the State Health Department to the end that effective, equitable management of ground water and safeguarding of public health will be attained to the maximum extent possible.

§ 62.1-265. Drought relief wells.

A political subdivision, or an authority serving a political subdivision, holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application for a ground water withdrawal permit on or before December 31, 1992. The ~~Board~~Director shall issue ground water withdrawal permits for supplemental drought relief wells for the amount of ground water needed annually to meet human consumption needs as documented by a water conservation and management plan approved by the ~~Board~~Director as provided in § 62.1-262. Any ground water withdrawal permits for supplemental drought relief wells shall be issued with the condition that withdrawals may only be made at times that mandatory water use restrictions have been implemented pursuant to the water conservation and management plan.

§ 62.1-266. Ground water withdrawal permits.

A. The ~~Board~~Director may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the ~~Board~~Director and shall contain such information, consistent with this chapter, as the ~~Board~~Director deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board Director is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit 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 permittee has violated any regulation or order of the Board or order of the Director pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the Board Director, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; 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 the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

§ 62.1-267. Issuance of special exceptions.

A. The Board Director may issue special exceptions to allow the withdrawal of ground water in cases of unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the intended purpose of the Act.

B. In reviewing an application for a special exception, the Board Director may consider the amount and duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any person requesting a special exception shall submit an application to the Board Director containing such information as the Board shall require by regulation adopted pursuant to this chapter.

C. Any special exception issued by the Board Director shall state the terms pursuant to which the applicant may withdraw ground water, including the amount of ground water that may be withdrawn in any period and the duration of the special exception. No special exception shall be issued for a term exceeding ten years.

D. A violation of any term or provision of a special exception shall subject the holder thereof to the same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal permit.

E. The Board Director shall have the power to amend or revoke any special exception after notice and opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or revocation of a ground water withdrawal permit.

§ 62.1-268. Issuance of special orders.

A. The Board Director may issue special orders (i) requiring any person who has violated the terms and provisions of a ground water withdrawal permit issued by the Board Director to comply with such terms and provisions; (ii) requiring any person who has failed to comply with a directive from the Board Director to comply with such directive; or (iii) requiring any person who has failed to comply with the provisions of this chapter or any decision of the Board Director pertaining to ground water to

comply with such provision or decision.

B. Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service by certified mail, sent to the last known address of such person, with the time limits counted from the date of such mailing; however, if the ~~Board~~Director finds that any such person is grossly affecting or presents an imminent and substantial danger to (i) the public welfare, safety or health; (ii) a public water supply; or (iii) commercial, industrial, agricultural or other beneficial uses, it may issue, without advance notice or hearing, an emergency special order directing the person to cease such withdrawal immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel such emergency special order. If a person who has been issued such a special order or an emergency special order is not complying with the terms thereof, the ~~Board~~Director may proceed in accordance with § 62.1-269, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the ~~Board~~Director. If an emergency special order requires cessation of a withdrawal, the ~~Board~~Director shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

C. The provisions of this section notwithstanding, the ~~Board~~Director may proceed directly under § 62.1-270 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation of the Board or order of the ~~Board~~Director pertaining to ground water, any condition of a ground water withdrawal permit or any provision of this chapter, the ~~Board~~Director may provide, in an order issued by the ~~Board~~Director against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-270. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection A of § 62.1-270 and shall not be subject to the provisions of § 2.2-514.

§ 62.1-269. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, standard or requirement of the Board or the Director pertaining to ground water, any provision of any ground water withdrawal permit issued by the ~~Board~~Director, or any provision of this chapter may be compelled to obey same and to comply therewith in a proceeding instituted by the ~~Board~~Department in any appropriate court for injunction, mandamus or other appropriate remedy. The ~~Board~~Department shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the ~~Board~~Director under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

§ 62.1-270. Penalties.

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the ~~Board~~Director pertaining to ground water, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the person in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

With the consent of any person in violation of this chapter, the ~~Board~~Director may provide, in an order issued by the ~~Board~~Director against the person, for the payment of civil charges. These charges shall be in lieu of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund.

B. Any person willfully or negligently violating any provision of this chapter, any regulation of the Board or order of the ~~Board~~Director pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board or order of the Director pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not

4725 an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of
4726 not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

4727 C. Any person who knowingly violates any provision of this chapter, and who knows at that time
4728 that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon
4729 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor
4730 more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an
4731 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not
4732 exceeding the greater of one million dollars or an amount that is three times the economic benefit
4733 realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect
4734 to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

4735 D. Criminal prosecution under this section shall be commenced within three years of discovery of the
4736 offense, notwithstanding the limitations provided in any other statute.

4737 § 67-401. Permitting process for clean coal projects.

4738 To the extent authorized by federal law, the ~~State Air Pollution Control Board~~*Department of*
4739 *Environmental Quality* shall implement permit processes that facilitate the construction of clean coal
4740 projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to
4741 processing permit applications for clean coal projects.

4742 2. That all licenses, permits, and certificates issued and granted by the State Air Pollution Control
4743 Board and the State Water Control Board and in effect as of the effective date of this act shall
4744 continue in effect on the terms of such license, permit, or certificate until expiration. The Director
4745 shall have the exclusive authority to act on any required submissions and to reissue, amend, or
4746 revoke such licenses, permits, and certificates. As of the effective date of this act, any
4747 communications or submissions of information required prior to expiration regarding such
4748 licenses, permits, or certificates shall be made to the Director.

4749 3. That one additional member of the State Air Pollution Control Board shall be appointed to an
4750 initial term of two years and the other additional member for an initial term of three years, and
4751 all members shall serve terms of four years thereafter.