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SENATE BILL NO. 1025

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact § 45.1-254 of the Code of Virginia, relating to coal surface mining operations; national pollutant discharge elimination system permits.*

Patron—Puckett

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 45.1-254 of the Code of Virginia is amended and reenacted as follows:**

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

A. Upon request of the Director, the State Water Control Board may delegate to the Director its authority, under the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 to issue, amend, revoke and enforce national pollutant discharge elimination system permits for the discharge of sewage, industrial wastes and other wastes 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 (§ 62.1-44.2 et seq.) 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 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 of every action related to the consideration of such permit application.

C. Prior to the issuance or reissuance of a permit, applicants shall submit an application on a form approved by the Director and a fee of \$300 for each discharge outfall point under the permit. If an application is approved the permittee shall, on the anniversary of the permit approval for each year of the permit term, submit \$300 for each discharge outfall point under the permit. Each permit shall remain valid for five years. All fees provided for under this section shall be in addition to any other fees levied pursuant to this chapter.

D. No national pollutant elimination system permit shall be issued if, within ~~thirty~~ 30 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 objects in writing to the issuance of such permit. Whenever the State Water Control Board 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.

E. An applicant who is aggrieved by an objection made under subsection D of this section shall have the right to a hearing before the State Water Control Board pursuant to § 62.1-44.25. If the State Water Control Board 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 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.).

F. Whenever, on the basis of any information available to it, the State Water Control Board 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, the Director has not commenced appropriate enforcement action, the State Water Control Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

G. 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.

H. 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.

I. The Director, by examining all available and relevant data, shall determine whether a discharge

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59 may cause or contribute to an in-stream excursion above the narrative or numeric criteria of a water
60 quality standard.

61 J. If a total maximum daily load ("TMDL") has been established by the State Water Control Board
62 for the receiving water body, then there shall be a rebuttable presumption that the TMDL serves as the
63 reasonable potential determination as to whether a discharge may cause or contribute to an in-stream
64 excursion above the narrative or numeric criteria of a water quality standard. If the receiving water
65 body does not have a TMDL established or if the Director finds that the presumption has been
66 otherwise rebutted, the Director may consider biological monitoring, chemical monitoring, and whole
67 effluent toxicity testing to determine whether a discharge may cause or contribute to an in-stream
68 excursion above the narrative or numeric criteria of a water quality standard. The Director may not
69 require whole effluent toxicity testing unless he first determines that the discharge causes a decline in
70 the baseline biological condition of the receiving water body.