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SENATE BILL NO. 1119

Offered January 12, 2011

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A BILL to amend and reenact §§ 10.1-1182, 10.1-1186, 10.1-1322, 10.1-1405, and 62.1-44.15 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1186.6, relating to the Department of Environmental Quality; permit compliance; civil penalty procedures.

Patron—McEachin

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1182, 10.1-1186, 10.1-1322, 10.1-1405, and 62.1-44.15 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1186.6 as follows:

§ 10.1-1182. Definitions.

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

"Department" means the Department of Environmental Quality.

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

"Environment" means the natural, scenic and historic attributes of the Commonwealth.

"Special order" means an administrative order issued to any party that has a stated duration of not more than ~~twelve~~ 12 months and that may include a civil penalty of not more than \$10,000 \$32,500.

§ 10.1-1186. General powers of the Department.

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

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

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

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

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

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

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

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

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

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

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

11. Notwithstanding any other provision of law and to the extent consistent with federal requirements, issue civil penalties of no more than \$15,000 pursuant to § 10.1-1186.6 to any person for

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59 failing to comply with (i) the provisions of any law administered by the Boards, the Director or the
60 Department, (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv)
61 any case decision, as defined in § 2.2-4001, of the Boards or Director. For purposes of this subdivision,
62 "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia
63 Waste Management Board; and

64 ~~112.~~ Perform all acts necessary or convenient to carry out the purposes of this chapter.

65 § 10.1-1186.6. Civil penalty procedures; notice; review.

66 A. Notwithstanding any other provision of law and to the extent consistent with federal requirements,
67 the Department may issue a civil penalty of not more than \$15,000 to any person to comply with (i) the
68 provisions of any law administered by the Boards, the Director or the Department, (ii) any condition of
69 a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as defined in
70 § 2.2-4001, of the Boards or Director. For purposes of this section, "Boards" means the State Air
71 Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.

72 B. The Department shall provide reasonable notice of the civil penalty in writing, either by certified
73 mail with return receipt requested or by personal service, to the person incurring the penalty describing
74 the violation with reasonable particularity. The issuance of a civil penalty shall be considered a case
75 decision, as defined in § 2.2-4001.

76 C. The person to whom the notice is addressed shall have 20 days from the date of service of the
77 notice provided for in subsection B in which to make written application for an informal fact finding
78 proceeding pursuant to § 2.2-4019, unless the agency provides for a longer period of time in which
79 application for a hearing may be made. If no application for a hearing is made within the time allowed,
80 the agency may make a final order imposing the penalty. A final order entered under this subsection
81 need not be delivered or mailed to the person against whom the civil penalty is imposed.

82 D. When an order assessing a civil penalty under this section becomes final by operation of law or
83 on appeal, and the amount of penalty is not paid within 30 days after the order becomes final, the
84 Department may transmit a true copy of the order assessing such penalty to the clerk of the circuit
85 court of any county or city wherein it is ascertained that the person owing such penalty has any estate;
86 and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be
87 recorded, and shall index it in the name of the Commonwealth as well as in the name of the person
88 owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the
89 property within such locality of the person owing the civil penalty in the amount of the civil penalty.
90 The Department may collect civil penalties that are owed in the same manner as provided by law in
91 respect to a judgment of a circuit court.

92 § 10.1-1322. Permits.

93 A. Pursuant to regulations adopted by the Board and subject to § 10.1-1322.01, permits may be
94 issued, amended, revoked or terminated and reissued by the Department and may be enforced under the
95 provisions of this chapter in the same manner as regulations and orders. Failure to comply with any
96 condition of a permit shall be considered a violation of this chapter and investigations and enforcement
97 actions may be pursued in the same manner as is done with regulations and orders of the Board under
98 the provisions of this chapter. Prior to its review of an application, the Board shall require an applicant
99 for any permit or authorization under this chapter to demonstrate to the Board that the applicant or
100 permit holder is in substantial compliance with local ordinances and with federal and state laws,
101 regulations, and rules, including permits and authorizations, for the protection of air quality in the
102 Commonwealth.

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

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

I. [Expired.]

§ 10.1-1405. Powers and duties of Director.

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

B. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulation.

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

C. The Director shall serve as the liaison with the United States Department of Energy on matters concerning the siting of high-level radioactive waste repositories, pursuant to the terms of the Nuclear Waste Policy Act of 1982.

D. The Director shall obtain a criminal records check pursuant to § 19.2-389 of key personnel listed in the disclosure statement when the Director determines, in his sole discretion, that such a records check will serve the purposes of this chapter.

E. Prior to its review of an application, the Director shall require an applicant for any permit or authorization under this chapter to demonstrate to him that the applicant or permit holder is in substantial compliance with local ordinances and with federal and state laws, regulations, and rules, including permits and authorizations, for the management of waste in the Commonwealth.

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

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

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

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

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

(2c) To 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 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 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.

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

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

(5b) Any certificate 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 owner has violated any regulation or order of the Board, any condition of a certificate, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;

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

3. The activity for which the certificate was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the certificate; 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 any discharge controlled by the certificate necessary to protect human health or the environment.

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory

mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

(5d) Prior to its review of an application, the Board shall require an applicant for any permit, certificate, or authorization under this chapter to demonstrate to the Board that the applicant or permit holder is in substantial compliance with local ordinances and with federal and state laws, regulations, and rules, including permits, certificates, and authorizations, for the protection of water quality in the Commonwealth.

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

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

(8a) To 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. 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 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 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 finds that any such owner is grossly affecting or presents an imminent and substantial

305 danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a
306 public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it
307 may issue, without advance notice or hearing, an emergency special order directing the owner to cease
308 such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable
309 notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency
310 special order. If an owner who has been issued such a special order or an emergency special order is not
311 complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where
312 the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction
313 compelling compliance with the emergency special order pending a hearing by the Board. If an
314 emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a
315 hearing within 48 hours of the issuance of the injunction.

316 (8c) The provisions of this section notwithstanding, the Board may proceed directly under
317 § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly
318 promulgated hereunder.

319 (8d) With the consent of any owner who has violated or failed, neglected or refused to obey any
320 regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board
321 may provide, in an order issued by the Board against such person, for the payment of civil charges for
322 past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges
323 shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and
324 shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state
325 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response
326 Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et
327 seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of this title, or a regulation, administrative or
328 judicial order, or term or condition of approval relating to or issued under those articles.

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

332 (8e) The Board shall develop and provide an opportunity for public comment on guidelines and
333 procedures that contain specific criteria for calculating the appropriate penalty for each violation based
334 upon the severity of the violations, the extent of any potential or actual environmental harm, the
335 compliance history of the facility or person, any economic benefit realized from the noncompliance, and
336 the ability of the person to pay the penalty.

337 (8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without
338 an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent
339 or minimize overflows of sewage from such system, the Board shall provide public notice of and
340 reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may
341 impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water
342 Act. Any person who comments on the proposed order shall be given notice of any hearing to be held
343 on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be
344 heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d),
345 any person who commented on the proposed order may file a petition, within 30 days after the issuance
346 of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the
347 evidence presented by the petitioner in support of the petition is material and was not considered in the
348 issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and
349 make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the
350 petitioner and make available to the public the reasons for such denial, and the petitioner shall have the
351 right to judicial review of such decision under § 62.1-44.29 if he meets the requirements thereof.

352 (9) To make such rulings under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 as may be required upon
353 requests or applications to the Board, the owner or owners affected to be notified by certified mail as
354 soon as practicable after the Board makes them and such rulings to become effective upon such
355 notification.

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

362 (11) To investigate any large-scale killing of fish.

363 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a
364 certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state
365 waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect
366 such settlement with the owner as will cover the costs incurred by the Board and by the Department of

Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

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

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

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

(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) To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in the Commonwealth.

(13) 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, 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 is to seek the advice of local, regional, or state planning authorities.

(14) 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) 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 general permits and 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) 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.