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**HOUSE BILL NO. 976**

Offered January 13, 2016

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A *BILL to amend and reenact §§ 10.1-1182, 10.1-1309, 10.1-1316, 10.1-1455, 62.1-44.15, 62.1-44.15:48, and 62.1-44.32 of the Code of Virginia, relating to violation of special orders; penalty.*

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Patron—Lopez

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

**1. That §§ 10.1-1182, 10.1-1309, 10.1-1316, 10.1-1455, 62.1-44.15, 62.1-44.15:48, and 62.1-44.32 of the Code of Virginia are amended and reenacted 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~~ \$50,000.

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

A. The Board 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, 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~~ \$50,000 for each violation, not to exceed ~~\$100,000~~ \$1 million 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 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 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 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,

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59 modify, amend or cancel such emergency special order. If the Board finds that an owner who has been  
60 issued a special order or an emergency special order is not complying with the terms thereof, it may  
61 proceed in accordance with § 10.1-1316 or 10.1-1320.

62 C. Any special order issued under the provisions of this section need not be filed with the Secretary  
63 of the Commonwealth, but the owner to whom such special order is directed shall be notified by  
64 certified mail, return receipt requested, sent to the last known address of such owner, or by personal  
65 delivery by an agent of the Board, and the time limits specified shall be counted from the date of  
66 receipt.

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

70 **§ 10.1-1316. Enforcement and civil penalties.**

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

74 B. Without limiting the remedies which may be obtained under subsection A, any owner violating or  
75 failing, neglecting or refusing to obey any Board regulation or order, any provision of this chapter, or  
76 any permit condition shall be subject, in the discretion of the court, to a civil penalty ~~not to exceed~~  
77 ~~\$32,500~~ \$50,000 for each violation, *not to exceed \$1 million per order*. Each day of violation shall  
78 constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to  
79 this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the  
80 size of the owner's business, the severity of the economic impact of the penalty on the business, and the  
81 seriousness of the violation. Such civil penalties shall be paid into the state treasury and deposited by  
82 the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25  
83 (§ 10.1-2500 et seq.) ~~of this title~~. Such civil penalties may, in the discretion of the court assessing  
84 them, be directed to be paid into the treasury of the county, city or town in which the violation  
85 occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct,  
86 except that where the owner in violation is the county, city or town itself, or its agent, the court shall  
87 direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia  
88 Environmental Emergency Response Fund pursuant to Chapter 25 ~~of this title~~ (§ 10.1-2500 et seq.).

89 C. With the consent of an owner who has violated or failed, neglected or refused to obey any Board  
90 regulation or order, or any provision of this chapter, or any permit condition, the Board may provide, in  
91 any order issued by the Board against the owner, for the payment of civil charges in specific sums, not  
92 to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could  
93 be imposed under subsection B. Such civil charges shall be paid into the state treasury and deposited by  
94 the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25  
95 ~~of this title~~ (§ 10.1-2500 et seq.).

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

101 **§ 10.1-1455. Penalties and enforcement.**

102 A. Any person who violates any provision of this chapter, any condition of a permit or certification,  
103 or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be  
104 assessed a civil penalty of not more than ~~\$32,500~~ \$50,000 for each day of such violation, *not to exceed*  
105 *\$1 million per order*. All civil penalties under this section shall be recovered in a civil action brought by  
106 the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state  
107 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response  
108 Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) ~~of this title~~.

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

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

118 C. The Board is authorized to issue orders to require any person to comply with the provisions of  
119 any law administered by the Board, the Director or the Department, any condition of a permit or  
120 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 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 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 \$50,000 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 (§ 10.1-2500 et seq.). 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 (§ 10.1-2500 et seq.).

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 the Director, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board 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 (§ 10.1-2500 et seq.).

G. In addition to all other available remedies, the Board may issue administrative orders for the violation of (i) any law or regulation administered by the Board; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the Board. 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 \$50,000 per violation not to exceed \$100,000 \$1 million per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. 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 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 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 find that any person is adversely

182 affecting the public health, safety or welfare, or the environment, the Board shall, after a reasonable  
183 attempt to give notice, issue, without a hearing, an emergency administrative order directing the person  
184 to cease the activity immediately and undertake any needed corrective action, and shall within 10 days  
185 hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify,  
186 amend or cancel the emergency administrative order. If the Board finds that a person who has been  
187 issued an administrative order or an emergency administrative order is not complying with the order's  
188 terms, the Board may utilize the enforcement and penalty provisions of this article to secure compliance.

189 H. In addition to all other available remedies, the Department and generators of recycling residues  
190 shall have standing to seek enforcement by injunction of conditions which are specified by applicants in  
191 order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

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

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

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

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

211 **§ 62.1-44.15. Powers and duties; civil penalties.**

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

213 (1) [Repealed.]

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

216 (2a) To study and investigate methods, procedures, devices, appliances, and technologies that could  
217 assist in water conservation or water consumption reduction.

218 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or  
219 without the Commonwealth.

220 (2c) To make reports concerning, and formulate recommendations based upon, any such water  
221 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth  
222 are met.

223 (3a) To establish such standards of quality and policies for any state waters consistent with the  
224 general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies  
225 established and to take all appropriate steps to prevent quality alteration contrary to the public interest or  
226 to standards or policies thus established, except that a description of provisions of any proposed standard  
227 or policy adopted by regulation which are more restrictive than applicable federal requirements, together  
228 with the reason why the more restrictive provisions are needed, shall be provided to the standing  
229 committee of each house of the General Assembly to which matters relating to the content of the  
230 standard or policy are most properly referable. The Board shall, from time to time, but at least once  
231 every three years, hold public hearings pursuant to § 2.2-4007.01 but, upon the request of an affected  
232 person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the  
233 standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever  
234 the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give  
235 due consideration to, among other factors, the economic and social costs and benefits which can  
236 reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or  
237 cancelled. The Board shall also give due consideration to the public health standards issued by the  
238 Virginia Department of Health with respect to issues of public health policy and protection. If the Board  
239 does not follow the public health standards of the Virginia Department of Health, the Board's reason for  
240 any deviation shall be made in writing and published for any and all concerned parties.

241 (3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or  
242 modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000  
243 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. However, to the extent allowed by federal law, any person holding a certificate issued by the Board that is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, reduction in the amount of nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the Department no later than 30 days prior to commencing construction.

(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 to ensure compliance with statutory, regulatory, and permit requirements. 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.

(6) To make investigations and inspections, to ensure compliance with any certificates, standards,

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

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

317 (8a) Except as otherwise provided in Articles 2.4 (§ 62.1-44.15:51 et seq.) and 2.5 (§ 62.1-44.15:67  
318 et seq.) issue special orders to owners (i) who are permitting or causing the pollution, as defined by §  
319 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct  
320 facilities in accordance with final approved plans and specifications to construct such facilities in  
321 accordance with final approved plans and specifications, (iii) who have violated the terms and provisions  
322 of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to  
323 comply with a directive from the Board to comply with such directive, (v) who have contravened duly  
324 adopted and promulgated water quality standards and policies to cease and desist from such  
325 contravention and to comply with such water quality standards and policies, (vi) who have violated the  
326 terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned  
327 treatment works to comply with such terms and provisions or (vii) who have contravened any applicable  
328 pretreatment standard or requirement to comply with such standard or requirement; and also to issue  
329 such orders to require any owner to comply with the provisions of this chapter and any decision of the  
330 Board. Except as otherwise provided by a separate article, orders issued pursuant to this subsection may  
331 include civil penalties of up to ~~\$32,500 per~~ *\$50,000 for each* violation, not to exceed ~~\$100,000~~ *\$1*  
332 *million* per order. The Board may assess penalties under this subsection if (a) the person has been issued  
333 at least two written notices of alleged violation by the Department for the same or substantially related  
334 violations at the same site, (b) such violations have not been resolved by demonstration that there was  
335 no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days  
336 have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such  
337 violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual  
338 amount of any penalty assessed shall be based upon the severity of the violations, the extent of any  
339 potential or actual environmental harm, the compliance history of the facility or person, any economic  
340 benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board  
341 shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for  
342 the issuance of an order that assesses penalties pursuant to this subsection. The issuance of a notice of  
343 alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001.  
344 Any notice of alleged violation shall include a description of each violation, the specific provision of  
345 law violated, and information on the process for obtaining a final decision or fact finding from the  
346 Department on whether or not a violation has occurred, and nothing in this section shall preclude an  
347 owner from seeking such a determination. Such civil penalties shall be paid into the state treasury and  
348 deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund  
349 (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et  
350 seq.) or Article 11 (§ 62.1-44.34:14 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund  
351 in accordance with § 62.1-44.34:11, and except that civil penalties assessed for violations of Article 2.3  
352 (§ 62.1-44.15:24 et seq.) shall be paid in accordance with the provisions of § 62.1-44.15:48.

353 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by  
354 the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of  
355 the Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof,  
356 and they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided  
357 that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial  
358 danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a  
359 public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it  
360 may issue, without advance notice or hearing, an emergency special order directing the owner to cease  
361 such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable  
362 notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency  
363 special order. If an owner who has been issued such a special order or an emergency special order is not  
364 complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where  
365 the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction  
366 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 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 may provide, in an order issued by the Board 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, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles, or civil charges assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under that article.

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

(8e) 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.

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

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

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed 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 regulation are most properly referable.

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

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect 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

428 circuit court within the territory embraced by such political subdivision. If the owner is an  
429 establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the  
430 circuit court of the county in which such establishment is located. If the owner is an individual or group  
431 of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in  
432 which such person or any of them reside.

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

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

443 (e) Nothing in this subsection shall be construed in any way to limit or prevent any other action  
444 which is now authorized by law by the Board against any owner.

445 (f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who  
446 adds or applies any chemicals or other substances that are recommended or approved by the State  
447 Department of Health to state waters in the course of processing or treating such waters for public water  
448 supply purposes, except where negligence is shown.

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

451 (13) To establish policies and programs for effective area-wide or basin-wide water quality control  
452 and management. The Board may develop comprehensive pollution abatement and water quality control  
453 plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering  
454 proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment  
455 facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water  
456 quality management and pollution control plan in the watershed or basin as a whole. In making such  
457 determinations, the Board is to seek the advice of local, regional, or state planning authorities.

458 (14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that  
459 are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or  
460 its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the  
461 purposes of this chapter.

462 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are  
463 protective of state waters and public health as an alternative to directly discharging pollutants into waters  
464 of the state. The requirements shall address various potential categories of reuse and may include  
465 general permits and provide for greater flexibility and less stringent requirements commensurate with the  
466 quality of the reclaimed water and its intended use. The requirements shall be developed in consultation  
467 with the Department of Health and other appropriate state agencies. This authority shall not be construed  
468 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

469 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's  
470 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland  
471 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net  
472 resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and  
473 guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

474 (17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to  
475 §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water  
476 resources between major river basins within the Commonwealth that may impact water basins in another  
477 state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1,  
478 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and  
479 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded  
480 withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to  
481 such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and  
482 receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a  
483 description of how notice shall be provided to interested parties, and (v) any other requirements that the  
484 Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and  
485 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or  
486 expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose  
487 conditions or limitations on the permitted activity.

488 (18) To be the lead agency for the Commonwealth's nonpoint source pollution management program,  
489 including coordination of the nonpoint source control elements of programs developed pursuant to



certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to implement a nonpoint source pollution management program in the Commonwealth, the distribution of assigned funds, the identification and establishment of priorities to address nonpoint source related water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and the development of a program for the prevention and control of soil erosion, sediment deposition, and nonagricultural runoff to conserve Virginia's natural resources.

**§ 62.1-44.15:48. Penalties, injunctions, and other legal actions.**

A. Any person who violates any provision of this article or of any regulation, ordinance, or standard and specification adopted or approved hereunder, including those adopted pursuant to the conditions of an MS4 permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued as herein provided, shall be subject to a civil penalty not to exceed ~~\$32,500~~ \$50,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the VSMP authority in enforcing the provisions of this article. The Board, Department, or VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. Any civil penalties assessed by a court as a result of a summons issued by a locality as an approved VSMP authority shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality 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 Stormwater Management Fund established pursuant to § 62.1-44.15:29. Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, any order of a VSMP authority authorized to enforce this article or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, any order of the VSMP authority or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state 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 article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, 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 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, 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 a violation under this subsection, be sentenced to pay 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 under this subsection.

D. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the VSMP authority, where authorized to enforce this article, may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected, or refused to obey any ordinance, any condition of a permit or state permit, any regulation or order of the Board, any order of the VSMP authority or the Department, or any provision of this article, the Board, Department, or VSMP authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges

551 collected shall be paid to the locality or state treasury pursuant to subsection A.

552 **§ 62.1-44.32. Penalties.**

553 (a) Except as otherwise provided in this chapter, any person who violates any provision of this  
554 chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a court,  
555 issued as herein provided, shall be subject to a civil penalty not to exceed ~~\$32,500~~ \$50,000 for each  
556 violation within the discretion of the court. Each day of violation of each requirement shall constitute a  
557 separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State  
558 Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title  
559 10.1, excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10  
560 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or  
561 term or condition of approval relating to or issued under those articles.

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

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

574 (b) Except as otherwise provided in this chapter, any person who willfully or negligently violates any  
575 provision of this chapter, any regulation or order of the Board, any condition of a certificate or any  
576 order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than  
577 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who  
578 knowingly violates any provision of this chapter, any regulation or order of the Board, any condition of  
579 a certificate or any order of a court issued as herein provided, or who knowingly makes any false  
580 statement in any form required to be submitted under this chapter or knowingly renders inaccurate any  
581 monitoring device or method required to be maintained under this chapter, shall be guilty of a felony  
582 punishable by a term of imprisonment of not less than one year nor more than three years, or in the  
583 discretion of the jury or the court trying the case without a jury, confinement in jail for not more than  
584 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant  
585 that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay  
586 a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate  
587 offense.

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

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