CHAPTER 510

An Act to amend and reenact § 62.1-44.15:1 of the Code of Virginia, relating to sewerage systems; state adoption of federal criteria.

[H 1475]

Approved March 29, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:1 of the Code of Virginia is amended and reenacted as follows:

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

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

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

B. Nothing contained in this chapter shall be construed to empower the Board to require the Commonwealth, or any political subdivision thereof, to upgrade the level of treatment in any works to a level more stringent than that required by applicable provisions of the Federal Water Pollution Control Act, *P.L. 84-660,* as amended.

C. Nothing contained in this chapter shall be construed to empower the Board to adopt the 2013 proposed Aquatic Life Ambient Water Quality Criteria for Ammonia of the U.S. Environmental Protection Agency unless the Board includes in such adoption a phased implementation program consistent with the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that includes (i) consideration of the relative priority of ammonia criteria and other water quality and water infrastructure needs of the local community, (ii) mechanisms to coordinate implementation timing with grant funding mechanisms pursuant to § 10.1-2131 and other treatment facility expansion and upgrade plans, (iii) appropriate long-term compliance schedules for facilities or classes of facilities utilizing multiple permit cycles, and (iv) appropriate mechanisms to address affordability limitations and financial hardship situations remaining notwithstanding the other elements of the phased implementation program.

2. That the Department of Environmental Quality shall (i) identify any other states that have adopted the U.S. Environmental Protection Agency 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia (the Criteria) as of July 1, 2018; (ii) identify the specific procedures and practices for the implementation of the Criteria by the General Assembly or the State Water Control Board (the Board) that will both minimize the impact of the Criteria on Virginia sewerage systems or other treatment works and be permissible under the federal Clean Water Act (33 U.S.C. § 1251 et seq.), including an opportunity to request consideration of alternative effluent limitations based on a demonstration by the permittee, acceptable to the Board, of the lack of appreciable harm from the discharge of ammonia to aquatic life that is present in the vicinity of the discharge or which should be present but for the discharge; and (iii) report its findings to the Chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Agriculture, Chesapeake and Natural Resources, the Senate Finance Committee, and the House Appropriations Committee no later than November 1, 2018. The completion of such identification and reporting shall not preclude the Board from proceeding to adopt the Criteria.

3. That the inclusion of the phased implementation program required by this act in the current regulatory action of the State Water Control Board (the Board) on the adoption of the U.S. Environmental Protection Agency 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia shall not require reproposal of the current action and shall not be considered changes with substantial impact under § 2.2-4007.06 of the Code of Virginia if the Department of Environmental Quality provides a 60-day public comment period on the proposed phased

implementation program before it is presented to the Board for adoption.