

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 62.1-44.15:6, 62.1-266, and 62.1-267 of the Code of Virginia, relating to ground water withdrawal permit; 15-year term; permit fee.

[H 211]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:6, 62.1-266, and 62.1-267 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:6. Permit fee regulations.

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

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

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	\$24,000
Major Municipal	\$21,300
Minor Industrial with nonstandard limits	\$10,300
Minor Industrial with standard limits	\$6,600
Minor Municipal greater than 100,000 gallons per day	\$7,500
Minor Municipal 10,001-100,000 gallons per day	\$6,000
Minor Municipal 1,000-10,000 gallons per day	\$5,400
Minor Municipal less than 1,000 gallons per day	\$2,000
General-industrial stormwater management	\$500
General-stormwater management-phase I land clearing	\$500
General-stormwater management-phase II land clearing	\$300
General-other	\$600
2. Virginia Pollution Abatement	
Industrial/Wastewater 10 or more inches per year	\$15,000
Industrial/Wastewater less than 10 inches per year	\$10,500
Industrial/Sludge	\$7,500
Municipal/Wastewater	\$13,500
Municipal/Sludge	\$7,500
General Permit	\$600
Other	\$750

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

59 human health or the environment.

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

62	Type of Permit/Certificate Category	Maximum Amount
63	1. Virginia Pollutant Discharge Elimination System	
64	Major Industrial	\$4,800
65	Major Municipal greater than 10 million gallons per day	\$4,750
66	Major Municipal 2-10 million gallons per day	\$4,350
67	Major Municipal less than 2 million gallons per day	\$3,850
68	Minor Industrial with nonstandard limits	\$2,040
69	Minor Industrial with standard limits	\$1,320
70	Minor Industrial water treatment system	\$1,200
71	Minor Municipal greater than 100,000 gallons per day	\$1,500
72	Minor Municipal 10,001-100,000 gallons per day	\$1,200
73	Minor Municipal 1,000-10,000 gallons per day	\$1,080
74	Minor Municipal less than 1,000 gallons per day	\$400
75	2. Virginia Pollution Abatement	
76	Industrial/Wastewater 10 or more inches per year	\$3,000
77	Industrial/Wastewater less than 10 inches per year	\$2,100
78	Industrial/Sludge	\$3,000
79	Municipal/Wastewater	\$2,700
80	Municipal/Sludge	\$1,500

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

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

98	Type of Permit	Maximum Amount
99	1. Virginia Water Protection	
100	Individual-wetland impacts	\$2,400 plus \$220 per 1/10 acre of impact over two acres, not to exceed \$60,000
101		
102		
103		
104	Individual-minimum instream flow	\$25,000
105	Individual-reservoir	\$35,000
106	Individual-nonmetallic mineral mining	\$7,500
107	General-less than 1/10 acre impact	\$0
108	General-1/10 to 1/2 acre impact	\$600
109	General-greater than 1/2 to one acre impact	\$1,200
110	General-greater than one acre to two acres of impact	\$120 per 1/10 acre of impact
111		
112	2. Ground Water Withdrawal	\$6,000
113	3. Surface Water Withdrawal	\$9,000
114		\$12,000

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

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

123 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board
 124 shall make a report on the implementation of the water permit program to the Senate Committee on
 125 Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House
 126 Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources
 127 and the House Committee on Finance. The report shall include the following: (i) the total costs, both
 128 direct and indirect, including the costs of overhead, water quality planning, water quality assessment,
 129 operations coordination, and surface water and ground water investigations, (ii) the total fees collected
 130 by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal
 131 funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number
 132 of permit applications received by category, (vii) the number of permits issued by category, (viii) the
 133 progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and
 134 indirect costs to neighboring states of administering their water permit programs, including what
 135 activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders
 136 and applicants.

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

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

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

147 **§ 62.1-266. Ground water withdrawal permits.**

148 A. The Board may issue any ground water withdrawal permit upon terms, conditions, and limitations
 149 necessary for the protection of the public welfare, safety, and health.

150 B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and
 151 shall contain such information, consistent with this chapter, as the Board deems necessary.

152 C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed
 153 term not to exceed ~~ten~~ 15 years. The term of a ground water withdrawal permit issued by the Board
 154 shall not be extended by modification beyond the maximum duration, and the permit shall expire at the
 155 end of the term unless a complete application for a new permit has been filed in a timely manner as
 156 required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to
 157 issue a new permit before the expiration date of the previous permit. ~~Any permit to withdraw ground~~
 158 ~~water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years~~
 159 ~~after the date of its issuance.~~

160 D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such
 161 savings as can be demonstrated to have been achieved through water conservation, provided that a
 162 beneficial use of the permitted ground water can be demonstrated for the following permit term.

163 E. Any permit issued by the Board under this chapter may, after notice and opportunity for a
 164 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided
 165 by the regulations of the Board:

166 1. The permittee has violated any regulation or order of the Board pertaining to ground water, any
 167 condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court,
 168 where such violation presents a hazard or potential hazard to human health or the environment or is
 169 representative of a pattern of serious or repeated violations ~~which~~ *that*, in the opinion of the Board,
 170 demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or
 171 requirements;

172 2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a
 173 material fact in applying for a permit, or in any other report or document required under this chapter or
 174 under the ground water withdrawal regulations of the Board;

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

177 4. There exists a material change in the basis on which the permit was issued that requires either a
 178 temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary
 179 to protect human health or the environment.

180 F. No application for a ground water withdrawal permit shall be considered complete unless the
 181 applicant has provided the Executive Director of the Board with notification from the governing body of
 182 the ~~county, city or town~~ *locality* in which the withdrawal is to occur that the location and operation of
 183 the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22

184 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant
185 exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

186 G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground
187 water through a single well or system of wells, including a backup well or wells, or such other means as
188 the withdrawer specifies.

189 **§ 62.1-267. Issuance of special exceptions.**

190 A. The Board may issue ~~a special exceptions~~ *a special exception* to allow the withdrawal of ground water in
191 ~~eases the case of an unusual situations where~~ *situation in which* requiring the user to obtain a ground
192 water withdrawal permit would be contrary to the intended purpose of the Act.

193 B. In reviewing an application for a special exception, the Board may consider the amount and
194 duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the
195 ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any
196 person requesting a special exception shall submit an application to the Board containing such
197 information as the Board shall require by regulation adopted pursuant to this chapter.

198 C. Any special exception issued by the Board shall state the terms pursuant to which the applicant
199 may withdraw ground water, including the amount of ground water that may be withdrawn in any
200 period and the duration of the special exception. No special exception shall be issued for a term
201 exceeding ~~ten~~ 15 years.

202 D. A violation of any term or provision of a special exception shall subject the holder thereof to the
203 same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal
204 permit.

205 E. The Board shall have the power to amend or revoke any special exception after notice and
206 opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or
207 revocation of a ground water withdrawal permit.

208 **2. That the State Water Control Board shall, by a regulation effective January 1, 2019, raise from**
209 **\$6,000 to \$9,000 the permit fee applicable to new or reissued individual ground water withdrawal**
210 **permits or certificates. The adoption of such regulation shall be exempt from the requirements of**
211 **Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of**
212 **Virginia).**