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HOUSE BILL NO. 801

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 62.1-44.15:25, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to stormwater regulations; no stricter than required by federal law.

Patrons—O'Quinn, Bell, Richard P., McGuire, Pillion and Wright; Senator: Ruff

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:25, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:25. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate, or amend state stormwater individual permits or coverage issued under state general permits; adopt regulations; approve and periodically review Virginia Stormwater Management Programs and management programs developed in conjunction with a state municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety, and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. The Board may:

1. Issue, deny, amend, revoke, terminate, and enforce state permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land-disturbing activities.

2. Take administrative and legal actions to ensure compliance with the provisions of this article by any person subject to state or VSMP authority permit requirements under this article, and those entities with an approved Virginia Stormwater Management Program and management programs developed in conjunction with a state municipal separate storm sewer system permit, including the proper enforcement and implementation of, and continual compliance with, this article.

3. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), amend or revoke any state permit issued under this article on the following grounds or for good cause as may be provided by the regulations of the Board:

a. Any person subject to state permit requirements under this article has violated or failed, neglected, or refused to obey any order or regulation of the Board, any order, notice, or requirement of the Department, any condition of a state permit, any provision of this article, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations, including the disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

b. Any person subject to state permit requirements under this article has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a state permit, or in any other report or document required under this law or under the regulations of the Board;

c. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

d. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

4. Cause investigations and inspections to ensure compliance with any state or VSMP authority permits, conditions, policies, rules, regulations, rulings, and orders which it may adopt, issue, or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.

5. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), adopt rules governing (i) hearings, (ii) the filing of reports, (iii) the issuance of permits and special orders, and (iv) all other matters relating to procedure, and amend or cancel any rule adopted.

6. Issue special orders to any person subject to state or VSMP authority permit requirements under this article (i) who is permitting or causing the unreasonable degradation of properties, water quality,

stream channels, and other natural resources to cease and desist from such activities; (ii) who has failed to construct facilities in accordance with final approved plans and specifications to construct such facilities; (iii) who has violated the terms and provisions of a state or VSMP authority permit issued by the Board or VSMP authority to comply with the provisions of the state or VSMP authority permit, this article, and any decision of the VSMP authority, the Department, or the Board; or (iv) who has violated the terms of an order issued by the court, the VSMP authority, the Department, or the Board to comply with the terms of such order, and also to issue orders to require any person subject to state or VSMP authority permit requirements under this article to comply with the provisions of this article and any decision of the Board.

Such special orders are to be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.) and shall become effective not less than 15 days after the date of mailing with confirmation of delivery of the notice to the last known address of any person subject to state or VSMP authority permit requirements under this article, provided that if the Board finds that any such person subject to state or VSMP authority permit requirements under this article is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety, or welfare or the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing any person subject to state or VSMP authority permit requirements under this article to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to any person subject to state or VSMP authority permit requirements under this article, to affirm, modify, amend, or cancel such emergency special order. If any person subject to state or VSMP authority permit requirements under this article who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.15:48, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the recipient of the order may appeal its issuance to the circuit court of the jurisdiction wherein the discharge was alleged to have occurred.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.15:48 for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any person subject to state or VSMP authority permit requirements under this article who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VSMP authority, any condition of a state or VSMP authority permit, or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § 62.1-44.15:48. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 62.1-44.15:48 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 Stormwater Management Fund established pursuant to § 62.1-44.15:29.

The provisions of this section notwithstanding, after July 1, 2018, the Board shall adopt no rule, regulation, or standard relating to stormwater that is inconsistent with or exceeds the requirements of any duly adopted federal stormwater statute, regulation, standard, criterion, or guidance document.

§ 62.1-44.15:25. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board by this chapter, it shall permit, regulate, and control soil erosion and stormwater runoff in the Commonwealth and may otherwise act to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion. It shall be the duty of the Board and it shall have the authority to:

1. Issue special orders pursuant to subdivision (8a) or (8b) of § 62.1-44.15 to any owner subject to requirements under this article, except that for any land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area of a locality that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and that is not part of a larger common plan of development or sale that disturbs one acre or more of land, such special orders may include civil penalties of up to \$5,000 per violation, not to exceed \$50,000 per order. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.15:48 or Article 5 (§ 62.1-44.20 et seq.) for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

121 2. With the consent of any owner subject to requirements under this article, the Board may provide,
122 in an order issued by the Board pursuant to subdivision (8d) of § 62.1-44.15 against such owner, for the
123 payment of civil charges for violations in specific sums. Such sums shall not exceed the limit specified
124 in subdivision A 1 or B 1, as applicable, of § 62.1-44.15:48. Such civil charges shall be collected in lieu
125 of any appropriate civil penalty that could be imposed pursuant to § 62.1-44.15:48 and shall not be
126 subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and
127 deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to
128 § 62.1-44.15:29.1.

129 *The provisions of this section notwithstanding, after July 1, 2018, the Board shall adopt no rule,*
130 *regulation, or standard relating to stormwater that is inconsistent with or exceeds the requirements of*
131 *any duly adopted federal stormwater statute, regulation, standard, criterion, or guidance document.*