

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 670

An Act to amend and reenact §§ 62.1-255, 62.1-262, and 62.1-266 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-258.1, relating to nonagricultural irrigation wells; prohibited outside surficial aquifer.

[S 673]

Approved April 6, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-255, 62.1-262, and 62.1-266 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-258.1 as follows:

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Agricultural irrigation" means irrigation that is used to support any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Department" means the Department of Environmental Quality.

"Eastern Shore Groundwater Management Area" means the ground water management area declared by the Board encompassing the Counties of Accomack and Northampton.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Irrigation" means the controlled application of water through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of the Commonwealth or any other state or country.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 62.1-258.1. Irrigation wells for nonagricultural use prohibited; exceptions.

Unless the Department of Environmental Quality has determined that the quantity or quality of the ground water in the surficial aquifer is not adequate to supply the proposed beneficial use, it shall be unlawful in a ground water management area for any person to construct a well for nonagricultural irrigation purposes except in the surficial aquifer. The provisions of this section shall not apply to wells constructed prior to the effective date of regulations adopted pursuant to subsection H of § 62.1-266.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ 62.1-260 and 62.1-261 and subsection H of § 62.1-266, shall include a water conservation and management plan approved by the Board. A water conservation and management plan shall include: (i) use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; and (iv) mandatory reductions during water-shortage emergencies including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve all water conservation plans in compliance with subdivisions clauses (i) through (iv) of this section.

§ 62.1-266. Ground water withdrawal permits.

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

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

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed

term not to exceed 15 years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner 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.

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

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

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

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

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the locality in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

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

H. The Board may adopt regulations to develop a general permit for the regulation of irrigation withdrawals from the surficial aquifer greater than 300,000 gallons in any one month. Regulations adopted pursuant to this subsection shall provide that withdrawals from the surficial aquifer may be permitted under either a general permit developed pursuant to this subsection or another ground water withdrawal permit.

2. That the State Water Control Board shall promulgate regulations establishing criteria for determining whether the quantity or quality of the ground water in a surficial aquifer is adequate to meet a proposed beneficial use. Such regulations shall specify the information required to be submitted to the Department of Environmental Quality (the Department) by a golf course or any other person seeking a determination from the Department that either the quantity or quality of the ground water in a surficial aquifer is not adequate to meet a proposed beneficial use. Such regulations shall require the Department, within 30 days of receipt of a complete request, to make a determination as to the adequacy of the quantity or quality of the ground water in a surficial aquifer.