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SENATE BILL NO. 1311

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact § 62.1-44.15:81 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.6 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:85, relating to water quality standards; modification of permits and certifications.

Patron—McClellan

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:81 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2.6 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:85 as follows:

§ 62.1-44.15:81. Application and preparation of draft certification conditions.

A. Any applicant for a federal license or permit for a natural gas transmission pipeline greater than 36 inches inside diameter subject to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) shall submit a separate application, at the same time the Joint Permit Application is submitted, to the Department containing a description of all activities that will occur in upland areas, including activities in or related to (i) slopes with a grade greater than 15 percent; (ii) karst geology features, including sinkholes and underground springs; (iii) proximity to sensitive streams and wetlands identified by the Department of Conservation and Recreation or the Department of Wildlife Resources; (iv) seasonally high water tables; (v) water impoundment structures and reservoirs; and (vi) areas with highly erodible soils, low pH, and acid sulfate soils.

B. At any time during the review of the application, but prior to issuing a certification pursuant to this article, the Department may issue an information request to the applicant for any relevant additional information necessary to determine (i) if any activities related to the applicant's project in upland areas are likely to result in a discharge to state waters and (ii) how the applicant proposes to minimize water quality impacts to the maximum extent practicable to protect water quality. The information request shall provide a reasonable amount of time for the applicant to respond.

C. The Department shall review the information contained in the application and any additional information obtained through any information requests issued pursuant to subsection B to determine if any activities described in the application or in any additional information requests (i) are likely to result in a discharge to state waters with the potential to adversely impact water quality and (ii) will not be addressed by the Virginia Water Protection Permit issued for the activity pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.). The Department of Wildlife Resources, the Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture and Consumer Services shall consult with the Department during the review of the application and any additional information obtained through any information requests issued pursuant to subsection B. Following the conclusion of its review, the Department shall develop a draft certification for public comment and potential issuance by the Department or the Board pursuant to § 62.1-44.15:02 that contains any additional conditions for activities in upland areas necessary to protect water quality. The Department shall make the information contained in the application and any additional information obtained through any information requests issued pursuant to subsection B available to the public.

D. Notwithstanding any applicable annual standards and specifications for erosion and sediment control or stormwater management pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.), the applicant shall not commence land-disturbing activity prior to approval by the ~~Department~~ Board of an erosion and sediment control plan and stormwater management plan in accordance with applicable regulations. The Department shall ~~act~~ *make a recommendation to the Board* on any plan submittal within 60 days after initial submittal of a completed plan to the Department. The ~~Department~~ Board may issue either approval or disapproval and shall provide written rationale for ~~any~~ *disapproval* its decision. The ~~Department~~ Board shall act on any plan that has been previously disapproved within 30 days after ~~the receipt of a recommendation from the Department on a plan that~~ has been revised and resubmitted for approval.

If the Department issues a stop work instruction pursuant to § 62.1-44.15:37.1 or § 62.1-44.15:58.1, the Department shall revise the applicable erosion and sediment control plan or stormwater management plan to ensure compliance with state water quality standards and shall make a recommendation to the Board within 60 days of completing the revised plan.

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59 *Notwithstanding subsection B of § 62.1-44.15:37.1 or subsection B of § 62.1-44.15:58.1, any stop*
60 *work instruction issued by the Department shall not be lifted unless the Board approves the applicable*
61 *revised erosion and sediment control plan or revised stormwater management plan.*

62 E. No action by either the Department or the Board on a certification pursuant to this article shall
63 alter the siting determination made through Federal Energy Regulatory Commission or State Corporation
64 Commission approval, *except that any applicant for certification under this section shall identify the*
65 *least environmentally damaging practicable alternative that avoids or minimizes impacts to aquatic*
66 *resources in their application materials.*

67 F. The Department shall assess an administrative charge to the applicant to cover the direct costs of
68 services rendered associated with its responsibilities pursuant to this section.

69 ***§ 62.1-44.15:85. Requests for modification or revocation of other certifications; public notice.***

70 A. *If the applicant seeks modification or revocation of any other approval or any condition of any*
71 *other approval from any other state or federal agency that is likely to result in an adverse impact to*
72 *state water quality, the applicant shall submit to the Board a copy of the request for such modification*
73 *or revocation, including the following information:*

74 1. *The name, mailing address, and telephone number of the requester and the name, mailing address,*
75 *and telephone number of any person representing the requestor; and*

76 2. *A statement specifically setting forth the requested modification and the reason for such*
77 *modification.*

78 B. *The Director shall review any request for modification or revocation and make a tentative*
79 *recommendation to the Board within 60 days of receipt of the completed request whether to (i) take no*
80 *action, (ii) amend the water quality certification to incorporate modifications granted by other agencies*
81 *and any additional conditions that may be necessary to ensure state water quality standards are not*
82 *violated, or (iii) revoke the water quality certification.*

83 C. *Any draft recommendation to modify or revoke the certification shall be publicly noticed, and*
84 *final decisions shall be made in the same manner as the original certification.*