

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 501

An Act to amend and reenact § 62.1-44.15:81 of the Code of Virginia, relating to water quality standards; modification of permits and certifications.

[S 1311]

Approved March 31, 2021

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 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. *Concurrently with the Joint Permit Application, the applicant shall also submit a detailed erosion and sediment control plan and stormwater management plan subject to Department review and approval.*

B. *After receipt of an application in accordance with subsection A, the Department shall issue a request for information about how the erosion and sediment control plan and stormwater management plan will address activities in or related to the upland areas identified in subsection A. The response to such request shall include the specific strategies and best management practices that will be utilized by the applicant to address challenges associated with each area type and an explanation of how such strategies and best management practices will ensure compliance with water quality standards.*

C. 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.~~ D. The Department shall review the information contained in the application, *the response to the information request in subsection B*, and any additional information obtained through any information requests issued pursuant to subsection B or C 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 or C. Following the conclusion of its review, the Department shall develop a draft certification *or denial. A draft certification, including (i) any additional conditions for activities in upland areas necessary to protect water quality and (ii) a condition that the applicant shall not commence land-disturbing activity prior to approval by the Department of the erosion and sediment control plan and stormwater management plan required pursuant to subsection E, shall be noticed 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 or C available to the public.

~~D.~~ E. 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 *resolution of any unresolved issues identified in subsection B to the satisfaction of the Department and* approval by the Department of an erosion and sediment control plan and stormwater management plan in accordance with applicable regulations. The Department shall act on any plan submittal within 60 days after initial submittal of a completed plan to the Department. The Department may issue either approval or disapproval and shall provide written rationale for ~~any disapproval~~ *its decision*. The Department shall act

on any plan that has been previously disapproved within 30 days after the plan has been revised and resubmitted for approval.

~~E.~~ *F.* No action by either the Department or the Board on a certification pursuant to this article shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval.

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

H. Neither the Department nor the Board shall expressly waive certification of a natural gas transmission pipeline of greater than 36 inches inside diameter under § 401 of the federal Clean Water Act (33 U.S.C. § 1341). The Department or the Board shall act on any certification request within a reasonable period of time pursuant to federal law. Nothing in this section shall be construed to prohibit the Department or the Board from taking action to deny a certification in accordance with the provisions of § 401 of the federal Clean Water Act (33 U.S.C. § 1341).