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SENATE BILL NO. 657
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by Senator Mason
on February 11, 2022)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-104, 62.1-242, and 62.1-255 of the Code of Virginia; to amend the Code of Virginia by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.6:1, and by adding sections numbered 62.1-248.2 and 62.1-263.1; and to repeal §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia, relating to Air Pollution Control Board and State Water Control Board; authority of Department of Environmental Quality.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-104, 62.1-242, and 62.1-255 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.6:1, and by adding sections numbered 62.1-248.2 and 62.1-263.1 as follows:

§ 3.2-401. Exclusions from chapter.

This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1; or (ii) a water-related permit issued by the State Water Control Board, Department of Environmental Quality applies.

§ 10.1-1186.3. Additional powers of Boards and the Department; mediation; alternative dispute resolution.

A. The State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board, in their discretion, or the Director, in his discretion, may employ mediation as defined in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve underlying issues, reach a consensus, or compromise on contested issues. An "appropriate case" means any process related to the development of a regulation by the Board or the issuance of a permit by the Department in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board or the Department finds that the use of a mediation or dispute resolution proceeding is in the public interest. The Boards or the Department shall consider not using a mediation or dispute resolution proceeding if:

1. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

2. The matter involves or may bear upon significant questions of state policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Board or the Department;

3. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

4. The matter significantly affects persons or organizations who are not parties to the proceeding;

5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding cannot provide such a record; and

6. The Board or the Department must maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution proceeding would interfere with the Department or the Board's fulfilling that requirement.

Mediation and alternative dispute resolution as authorized by this section are voluntary procedures which supplement rather than limit other dispute resolution techniques available to the Boards or the Department. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only with the consent and participation of the permit applicant and shall be terminated at the request of the permit applicant.

B. The decision to employ mediation or a dispute resolution proceeding is in a Board's or the Department's sole discretion and is not subject to judicial review.

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60 C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board
 61 *or the Department*, but may be considered by a ~~Board~~ *the Department* in issuing a permit or *by a Board*
 62 *in promulgating a regulation.*

63 D. Each Board *and the Department* shall adopt rules and regulations, in accordance with the
 64 Administrative Process Act, for the implementation of this section. Such rules and regulations shall
 65 include: (i) standards and procedures for the conduct of mediation and dispute resolution, including an
 66 opportunity for interested persons identified by the ~~Board~~ *Department* to participate in the proceeding;
 67 (ii) the appointment and function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties
 68 to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of
 69 papers, work product or other materials.

70 E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution
 71 proceeding shall govern all such proceedings held pursuant to this section except where *the Department*
 72 *or a Board* uses or relies on information obtained in the course of such proceeding in issuing a permit
 73 or promulgating a regulation, *respectively.*

74 Nothing in this section shall create or alter any right, action or cause of action, or be interpreted or
 75 applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with
 76 applicable federal law or with any applicable requirement for the Commonwealth to obtain or maintain
 77 federal delegation or approval of any regulatory program.

78 **§ 10.1-1306. Inspections, investigations, etc.**

79 The ~~Board~~ *Department* shall make, or cause to be made, such investigations and inspections and do
 80 such other things as are reasonably necessary to carry out the provisions of this chapter, within the
 81 limits of the appropriations, study grants, funds, or personnel which are available for the purposes of
 82 this chapter, including the achievement and maintenance of such levels of air quality as will protect
 83 human health, welfare and safety and to the greatest degree practicable prevent injury to plant and
 84 animal life and property and which will foster the comfort and convenience of the people of the
 85 Commonwealth and their enjoyment of life and property and which will promote the economic and
 86 social development of the Commonwealth and facilitate enjoyment of its attractions.

87 **§ 10.1-1307. Further powers and duties of Board and Department.**

88 A. The Board shall have the power to control and regulate its internal affairs; *The Department shall*
 89 *have the power to* initiate and supervise research programs to determine the causes, effects, and hazards
 90 of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate
 91 with and receive money from the federal government or any county or municipal government, and
 92 receive money from any other source, whether public or private; develop a comprehensive program for
 93 the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise,
 94 consult, and cooperate with agencies of the United States and all agencies of the Commonwealth,
 95 political subdivisions, private industries, and any other affected groups in furtherance of the purposes of
 96 this chapter.

97 B. The Board may adopt by regulation emissions standards controlling the release into the
 98 atmosphere of air pollutants from motor vehicles, only as provided in § 10.1-1307.05 and Article 22
 99 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

100 C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, ~~it~~ *the Department*
 101 ~~may in its discretion~~ grant local variances therefrom, if it finds after an investigation and hearing that
 102 local conditions warrant; *except that no local variances shall be granted from regulations adopted by*
 103 *the Board pursuant to § 10.1-1308 related to the requirements of subsection E of §10.1-1308 or Article*
 104 *4 (§ 10.1-1329 et seq.).* If local variances are permitted, the ~~Board~~ *Department* shall issue an order to
 105 this effect. Such order shall be subject to revocation or amendment at any time if the ~~Board~~ *Department*,
 106 after a hearing, determines that the amendment or revocation is warranted. Variances and amendments to
 107 variances shall be adopted only after a public hearing has been conducted pursuant to the public
 108 advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled
 109 hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

110 D. After the Board has adopted the regulations provided for in § 10.1-1308, ~~it~~ *the Department* shall
 111 have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held
 112 hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce ~~its~~ *the*
 113 *Board's* regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for
 114 injunctions for the enforcement of ~~its~~ orders, regulations, and the abatement and control of air pollution
 115 and for the enforcement of penalties.

116 E. The Board in making regulations ~~and~~; *the Department* in approving variances, control programs,
 117 or permits; and the courts in granting injunctive relief under the provisions of this chapter, shall
 118 consider facts and circumstances relevant to the reasonableness of the activity involved and the
 119 regulations proposed to control it, including:

120 1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of
 121 property which is caused or threatened to be caused;

- 122 2. The social and economic value of the activity involved;
- 123 3. The suitability of the activity to the area in which it is located, *except that consideration of this*
- 124 *factor shall be satisfied if the local governing body of a locality in which a facility or activity is*
- 125 *proposed has resolved that the location and operation of the proposed facility or activity is suitable to*
- 126 *the area in which it is located;* and

127 4. The scientific and economic practicality of reducing or eliminating the discharge resulting from

128 such activity.

129 F. ~~The Board may designate one of its members, the Director, or a staff assistant to~~ *Department shall*

130 *conduct the hearings provided for in this chapter. A record of the hearing shall be made and furnished*

131 *to the Board for its use in arriving at its decision.*

132 G. The Board shall not:

- 133 1. Adopt any regulation limiting emissions from wood heaters; or
 - 134 2. Enforce against a manufacturer, distributor, or consumer any federal regulation limiting emissions
- 135 from wood heaters adopted after May 1, 2014.

136 H. The ~~Board~~ *Department* shall submit an annual report to the Governor and General Assembly on

137 or before October 1 of each year on matters relating to the Commonwealth's air pollution control

138 policies and on the status of the Commonwealth's air quality.

139 *I. In granting a permit pursuant to this section, the Department shall provide in writing a clear and*

140 *concise statement of the legal basis, scientific rationale, and justification for the decision reached. When*

141 *the decision of the Department is to deny a permit, pursuant to this section, the Department shall, in*

142 *consultation with legal counsel, provide a clear and concise statement explaining the reason for the*

143 *denial, the scientific justification for the same, and how the Department's decision is in compliance with*

144 *applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by*

145 *certified mail to the permittee or applicant.*

146 **§ 10.1-1307.01. Further duties of Board and Department; localities particularly affected.**

147 A. ~~Before The Board, before~~ *promulgating a regulation under consideration, or the Department,*

148 *before granting a variance to an existing regulation, or issuing a permit for the construction of a new*

149 *major source or for a major modification to an existing source, if the Board finds it is found that there*

150 *is a locality particularly affected by the regulation, variance, or permit, the Board shall, respectively:*

151 1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in each

152 locality affected at least 30 days prior to the close of any public comment period. Such notice shall

153 contain a statement of the estimated local impact of the proposed action, which at a minimum shall

154 provide information regarding specific pollutants and the total quantity of each that may be emitted and

155 shall list the type and quantity of any fuels to be used.

156 2. Mail the notice to the chief elected official and chief administrative officer of and the planning

157 district commission for such locality.

158 Written comments shall be accepted by the Board for at least 15 days after any hearing on the

159 regulation, ~~variance, or permit,~~ unless the Board votes to shorten the period. *Written comments shall be*

160 *accepted by the Department for at least 15 days after any hearing on the variance or permit.*

161 B. ~~Before~~ *If the Department finds, before* granting any variance to an existing regulation or issuing

162 any permit for (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more,

163 (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a

164 capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to

165 transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired

166 compressor station facility used to transport natural gas, ~~if the Board finds~~ that there is a locality

167 particularly affected by such variance or permit, the ~~Board~~ *Department* shall:

168 1. Require the applicant to publish a notice in at least one local paper of general circulation in any

169 locality particularly affected at least 60 days prior to the close of any public comment period. Such

170 notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide

171 information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the

172 type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request Board~~

173 ~~consideration or~~ *as to the date and location of a public hearing;* and (v) advise the public where to

174 obtain information regarding the proposed action. The Department shall post such notice on the

175 Department website and on a Department social media account.

176 2. Require the applicant to mail the notice to (i) the chief elected official of, chief administrative

177 officer of, and planning district commission for each locality particularly affected; (ii) every public

178 library and public school located within five miles of such facility; and (iii) the owner of each parcel of

179 real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of

180 the locality.

181 Written comments shall be accepted by the ~~Board~~ *Department* for at least 30 days after any hearing

182 on such variance or permit, unless the ~~Board votes~~ *Director elects* to shorten the period.

183 C. For the purposes of this section, the term "locality particularly affected" means any locality that
 184 bears any identified disproportionate material air quality impact that would not be experienced by other
 185 localities.

186 **§ 10.1-1307.02. Permit for generation of electricity during ISO-declared emergency.**

187 A. As used in this section:

188 "Emergency generation source" means a stationary internal combustion engine that operates according
 189 to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

190 "ISO-declared emergency" means a condition that exists when the independent system operator, as
 191 defined in § 56-576, notifies electric utilities that an emergency exists or may occur and that complies
 192 with the definition of "emergency" adopted by the Board pursuant to subsection B.

193 "Retail customer" has the same meaning ascribed thereto in § 56-576.

194 B. The Board shall adopt a general permit ~~or permits regulation~~ for the use of back-up generation to
 195 authorize the construction, installation, reconstruction, modification, and operation of emergency
 196 generation sources during ISO-declared emergencies. Such general permit ~~or permits regulation~~ shall
 197 include a definition of "emergency" that is compatible with the ISO's emergency operations manual.
 198 After adoption of such general permit ~~or permits regulation~~, any amendments to the Board's regulations
 199 necessary to carry out the provisions of this section shall be exempt from Article 2 (§ 2.2-4006 et seq.)
 200 of the Administrative Process Act.

201 **§ 10.1-1307.04. Greenhouse gas emissions inventory.**

202 A. The Department shall conduct a comprehensive statewide baseline and projection inventory of all
 203 greenhouse gas (GHG) emissions and shall update such inventory every four years. The Board may
 204 adopt regulations necessary to collect from all source sectors data needed by the Department to conduct,
 205 update, and maintain such inventory.

206 B. The ~~Board~~ Department shall include the inventory in the report required pursuant to subsection H
 207 of § 10.1-1307, beginning with the report issued prior to October 1, 2022, and every four years
 208 thereafter. The Department shall publish such inventory on its website, showing changes in GHG
 209 emissions relative to an estimated GHG emissions baseline case for calendar year 2010.

210 C. Any information, except emissions data, that is reported to or otherwise obtained by the
 211 Department pursuant to this section and that contains or might reveal proprietary information shall be
 212 confidential and shall be exempt from the mandatory disclosure requirements of the Virginia Freedom of
 213 Information Act (§ 2.2-3700 et seq.). Each owner shall notify the Director or his representative of the
 214 existence of proprietary information if he desires the protection provided pursuant to this subsection.

215 **§ 10.1-1308.1. Streamlined permitting process for qualified energy generators.**

216 A. As used in this section:

217 "Biomass" means organic material that is available on a renewable or recurring basis, including:

218 1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush,
 219 low-commercial value materials or undesirable species, and woody material harvested for the purpose of
 220 forest fire fuel reduction or forest health and watershed improvement;

221 2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including
 222 straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils,
 223 greases, whey, and lactose;

224 3. Animal waste, including manure and slaughterhouse and other processing waste;

225 4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and
 226 manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated
 227 or painted wood wastes and wood contaminated with plastic;

228 5. Crops and trees planted for the purpose of being used to produce energy;

229 6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts
 230 generated during the wastewater treatment process; and

231 7. Municipal solid waste, excluding tires and medical and hazardous waste.

232 "Expedited process" means a process that (i) requires the applicant to pay fees to the Commonwealth
 233 in connection with the issuance and processing of the permit application that do not exceed \$50 and (ii)
 234 has a duration, from receipt of a complete permit application until final action by the ~~Board~~ ~~or~~
 235 Department on the application, not longer than 60 days.

236 "Qualified energy generator" means a commercial facility located in the Commonwealth with the
 237 capacity annually to generate no more than five megawatts of electricity, or produce the equivalent
 238 amount of energy in the form of fuel, steam, or other energy product, that is generated or produced
 239 from biomass, and that is sold to an unrelated person or used in a manufacturing process.

240 B. The ~~Board~~ Department shall develop an expedited process for issuing any permit that the ~~Board~~ ~~it~~
 241 is required to issue for the construction or operation of a qualified energy generator. The development of
 242 the expedited permitting process shall be in accordance with subdivision A 8 of § 2.2-4006; however, if
 243 the construction or operation of a qualified energy generator is subject to a major new source review
 244 program required by § 110(a)(2)(C) of the federal Clean Air Act, this section shall not apply.

245 **§ 10.1-1309. Issuance of special orders; civil penalties.**

246 A. The ~~Board~~ *Department* shall have the power to issue special orders to:

247 (i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist
248 from such pollution;

249 (ii) owners who have failed to construct facilities in accordance with or have failed to comply with
250 plans for the control of air pollution submitted by them to and approved by the ~~Board~~ *Department*, to
251 construct such facilities in accordance with or otherwise comply with, such approved plans;

252 (iii) owners who have violated or failed to comply with the terms and provisions of any ~~Board~~
253 *Department* order or directive to comply with such terms and provisions;

254 (iv) owners who have contravened duly adopted and promulgated air quality standards and policies,
255 to cease such contravention and to comply with air quality standards and policies;

256 (v) require any owner to comply with the provisions of this chapter and any ~~Board~~ *Department*
257 decision; and

258 (vi) require any person to pay civil penalties of up to \$32,500 for each violation, not to exceed
259 \$100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by
260 the Department for the same or substantially related violations at the same site, (b) such violations have
261 not been resolved by demonstration that there was no violation, by an order issued by the ~~Board~~ or the
262 Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of
263 alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted
264 in accordance with subsection B. The actual amount of any penalty assessed shall be based upon the
265 severity of the violations, the extent of any potential or actual environmental harm, the compliance
266 history of the facility or person, any economic benefit realized from the noncompliance, and the ability
267 of the person to pay the penalty. The ~~Board~~ *Department* shall provide the person with the calculation for
268 the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties
269 pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State
270 Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance
271 of a notice of alleged violation by the Department shall not be considered a case decision as defined in
272 § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific
273 provision of law violated, and information on the process for obtaining a final decision or fact finding
274 from the Department on whether or not a violation has occurred, and nothing in this section shall
275 preclude an owner from seeking such a determination.

276 B. Such special orders are to be issued only after a hearing before a hearing officer appointed by the
277 Supreme Court in accordance with § 2.2-4020 with reasonable notice to the affected owners of the time,
278 place and purpose thereof, and they shall become effective not less than five days after service as
279 provided in subsection C below. Should the ~~Board~~ *Department* find that any such owner is unreasonably
280 affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a
281 reasonable attempt to give notice, it shall declare a state of emergency and may issue without hearing an
282 emergency special order directing the owner to cease such pollution immediately, and shall within 10
283 days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm,
284 modify, amend or cancel such emergency special order. If the ~~Board~~ *Department* finds that an owner
285 who has been issued a special order or an emergency special order is not complying with the terms
286 thereof, it may proceed in accordance with § 10.1-1316 or 10.1-1320.

287 C. Any special order issued under the provisions of this section need not be filed with the Secretary
288 of the Commonwealth, but the owner to whom such special order is directed shall be notified by
289 certified mail, return receipt requested, sent to the last known address of such owner, or by personal
290 delivery by an agent of the ~~Board~~ *Department*, and the time limits specified shall be counted from the
291 date of receipt.

292 D. Nothing in this section or in § 10.1-1307 shall limit the ~~Board's~~ *Department's* authority to proceed
293 against such owner directly under § 10.1-1316 or 10.1-1320 without the prior issuance of an order,
294 special or otherwise.

295 **§ 10.1-1309.1. Special orders; penalties.**

296 The ~~Board~~ *Department* is authorized to issue special orders in compliance with the Administrative
297 Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the ~~Board~~ *Department* a plan to abate,
298 control, prevent, remove, or contain any substantial and imminent threat to public health or the
299 environment that is reasonably likely to occur if such source ceases operations. Such plan shall also
300 include a demonstration of financial capability to implement the plan. Financial capability may be
301 demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained
302 within the Department, submission of a bond, corporate guarantee based on audited financial statements,
303 or such other instruments as the ~~Board~~ *Department* may deem appropriate. The ~~Board~~ *Department* may
304 require that such plan and instruments be updated as appropriate. The ~~Board~~ *Department* shall give due
305 consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and

306 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

307 For the purposes of this section, "ceases operation" means to cease conducting the normal operation
308 of a source which is regulated under this chapter under circumstances where it would be reasonable to
309 expect that such operation will not be resumed by the owner at the source. The term shall not include
310 the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with
311 Board regulations.

312 Any person who ceases operations and who knowingly and willfully fails to implement a closure
313 plan or to provide adequate funds for implementation of such plan shall, if such failure results in a
314 significant harm or an imminent and substantial threat of significant harm to human health or the
315 environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred
316 in abating, controlling, preventing, removing, or containing such harm or threat.

317 Any person who ceases operations and who knowingly and willfully fails to implement a closure
318 plan or to provide adequate funds for implementation of such plan shall, if such failure results in a
319 significant harm or an imminent and substantial threat of significant harm to human health or the
320 environment, be guilty of a Class 4 felony.

321 **§ 10.1-1310. Decision of Department pursuant to hearing.**

322 Any decision by the ~~Board~~ *Department* rendered pursuant to hearings under § 10.1-1309 shall be
323 reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the
324 ~~Board's~~ *Department's* decision is based. Certified copies of the written decision shall be delivered or
325 mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this
326 section shall render such decision invalid.

327 **§ 10.1-1310.1. Notification of local government.**

328 Upon determining that there has been a violation of this chapter or any regulation promulgated under
329 this chapter or order of the ~~Board~~ *Department*, and such violation poses an imminent threat to the
330 health, safety or welfare of the public, the Director shall immediately notify the chief administrative
331 officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any
332 employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the
333 notification required by this section.

334 **§ 10.1-1311. Penalties for noncompliance; judicial review.**

335 A. The Board is authorized to promulgate regulations providing for the determination of a formula
336 for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to
337 subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act,
338 as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this
339 section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

340 B. Upon a determination of the amount by the ~~Board~~ *Department*, the ~~Board~~ *Department* shall
341 petition the circuit court of the county or city wherein the owner subject to such noncompliance
342 assessment resides, regularly or systematically conducts affairs or business activities, or where such
343 owner's property affected by the administrative action is located for an order requiring payment of a
344 noncompliance penalty in a sum the court deems appropriate.

345 C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court.
346 All sums collected, less the assessment and collection costs, shall be paid into the state treasury and
347 deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to
348 Chapter 25 (§ 10.1-2500 et seq.) of this title.

349 D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments,
350 sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal
351 enforcement proceedings brought under other provisions of this chapter.

352 **§ 10.1-1312. Air pollution control districts.**

353 A. The ~~Board~~ *Department* may create, within any area of the Commonwealth, local air pollution
354 control districts comprising a city or county or a part or parts of each, or two or more cities or counties,
355 or any combination or parts thereof. Such local districts may be established by the ~~Board~~ *Department* on
356 its own motion or upon request of the governing body or bodies of the area involved.

357 B. In each district there shall be a local air pollution control committee, the members of which shall
358 be appointed by the ~~Board~~ *Department* from lists of recommended nominees submitted by the respective
359 governing bodies of each locality, all or a portion of which are included in the district. The number of
360 members on each committee shall be in the discretion of the ~~Board~~ *Department*. When a district
361 includes two or more localities or portions thereof, the ~~Board~~ *Department* shall apportion the
362 membership of the committee among the localities, provided that each locality shall have at least one
363 representative on the committee. The members shall not be compensated out of state funds, but may be
364 reimbursed for expenses out of state funds. Localities may provide for the payment of compensation and
365 reimbursement of expenses to the members and may appropriate funds therefore. The portion of such
366 payment to be borne by each locality shall be prescribed by agreement.

367 C. The local committee is empowered to observe compliance with the regulations of the Board and

368 report instances of noncompliance to the ~~Board~~ *Department*, to conduct educational programs relating to
 369 air pollution and its effects, to assist the ~~Department~~ in its air monitoring programs, to initiate and make
 370 studies relating to air pollution and its effects, and to make recommendations to the ~~Board~~ *Department*.

371 D. The governing body of any locality, wholly or partially included within any such district, may
 372 appropriate funds for use by the local committee in air pollution control and studies.

373 **§ 10.1-1313. State Advisory Board on Air Pollution.**

374 The ~~Board~~ *Department* is authorized to name qualified persons to a State Advisory Board on Air
 375 Pollution.

376 **§ 10.1-1314. Owners to furnish plans, specifications and information.**

377 Every owner which the ~~Board~~ *Department* has reason to believe is causing, or may be about to
 378 cause, an air pollution problem shall on request of the ~~Board~~ *Department* furnish such plans,
 379 specifications and information as may be required by the ~~Board~~ *Department* in the discharge of its
 380 duties under this chapter. Any information, except emission data, as to secret processes, formulae or
 381 methods of manufacture or production shall not be disclosed in public hearing and shall be kept
 382 confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished
 383 promptly to the person from whom such sample is requested.

384 **§ 10.1-1315. Right of entry.**

385 Whenever it is necessary for the purposes of this chapter, the ~~Board~~ *Department* or any ~~member,~~
 386 agent or employee thereof, when duly authorized by the ~~Board~~ *Director*, may at reasonable times enter
 387 any establishment or upon any property, public or private, to obtain information or conduct surveys or
 388 investigations.

389 **§ 10.1-1316. Enforcement and civil penalties.**

390 A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any
 391 Board regulation or *Department* order, or any permit condition may be compelled to comply by
 392 injunction, mandamus or other appropriate remedy.

393 B. Without limiting the remedies which may be obtained under subsection A, any owner violating or
 394 failing, neglecting or refusing to obey any Board regulation or *Department* order, any provision of this
 395 chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to
 396 exceed \$32,500 for each violation. Each day of violation shall constitute a separate offense. In
 397 determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall
 398 consider, in addition to such other factors as it may deem appropriate, the size of the owner's business,
 399 the severity of the economic impact of the penalty on the business, and the seriousness of the violation.
 400 Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the
 401 Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this
 402 title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into
 403 the treasury of the county, city or town in which the violation occurred, to be used to abate
 404 environmental pollution in such manner as the court may, by order, direct, except that where the owner
 405 in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid
 406 into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency
 407 Response Fund pursuant to Chapter 25 of this title.

408 C. With the consent of an owner who has violated or failed, neglected or refused to obey any Board
 409 regulation or *Department* order, or any provision of this chapter, or any permit condition, the ~~Board~~
 410 *Department* may provide, in any order issued by the ~~Board~~ *Department* against the owner, for the
 411 payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges
 412 shall be in lieu of any civil penalty which could be imposed under subsection B. Such civil charges
 413 shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental
 414 Emergency Response Fund pursuant to Chapter 25 of this title.

415 D. The ~~Board~~ *Department* shall develop and provide an opportunity for public comment on
 416 guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each
 417 violation based upon the severity of the violations, the extent of any potential or actual environmental
 418 harm, the compliance history of the facility or person, any economic benefit realized from the
 419 noncompliance, and the ability of the person to pay the penalty.

420 **§ 10.1-1318. Appeal from decision of Department.**

421 A. Any owner aggrieved by a final decision of the ~~Board~~ *Department* under § 10.1-1309, § 10.1-1322
 422 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of
 423 the Administrative Process Act (§ 2.2-4000 et seq.).

424 B. Any person who has participated, in person or by submittal of written comments, in the public
 425 comment process related to a final decision of the ~~Board~~ *Department* under § 10.1-1322 and who has
 426 exhausted all available administrative remedies for review of the ~~Board's~~ *Department's* decision, shall be
 427 entitled to judicial review of the ~~Board's~~ *Department's* decision in accordance with the provisions of the
 428 Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial

429 review of a case or controversy pursuant to Article III of the United States Constitution. A person shall
 430 be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is
 431 an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is
 432 fairly traceable to the decision of the Board and not the result of the independent action of some third
 433 party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the
 434 court.

435 **§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.**

436 Any owner knowingly violating any provision of this chapter, Board regulation, or *Department* order,
 437 or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine
 438 of not more than \$10,000 for each violation within the discretion of the court. Each day of violation
 439 shall constitute a separate offense.

440 Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect
 441 substantively or procedurally the right of any person to damages or other relief on account of injury to
 442 persons or property.

443 **§ 10.1-1320.1. Duty of attorney for the Commonwealth.**

444 It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized
 445 representative has reported any violation of (i) this chapter ~~or~~, (ii) any regulation *of the Board*, or (iii)
 446 order of the ~~Board~~ *Department*, to cause proceedings to be prosecuted without delay for the fines and
 447 penalties in such cases.

448 **§ 10.1-1322. Permits.**

449 A. Pursuant to regulations adopted by the Board ~~and subject to § 10.1-1322.01~~, permits may be
 450 issued, amended, revoked or terminated and reissued by the Department and may be enforced under the
 451 provisions of this chapter in the same manner as regulations and orders. Failure to comply with any
 452 condition of a permit shall be considered a violation of this chapter and investigations and enforcement
 453 actions may be pursued in the same manner as is done with regulations *of the Board* and orders of the
 454 ~~Board~~ *Department* under the provisions of this chapter. To the extent allowed by federal law, any person
 455 holding a permit who is intending to upgrade the permitted facility by installing technology, control
 456 equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will
 457 result in improved energy efficiency, will reduce the emissions of regulated air pollutants, and meets the
 458 requirements of Best Available Control Technology shall not be required to obtain a new, modified, or
 459 amended permit. The permit holder shall provide the demonstration anticipated by this subsection to the
 460 Department no later than 30 days prior to commencing construction.

461 B. The Board by regulation may prescribe and provide for the payment and collection of annual
 462 permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i)
 463 the federal Environmental Protection Agency approves the Board's operating permit program established
 464 pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are
 465 needed earlier to maintain primacy over the program. The annual fees shall be based on the actual
 466 emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal
 467 Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The
 468 annual permit program fees shall not exceed a base year amount of \$25 per ton using 1990 as the base
 469 year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal
 470 Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu
 471 of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The
 472 fees shall approximate the direct and indirect costs of administering and enforcing the permit program,
 473 and of administering the small business stationary source technical and environmental compliance
 474 assistance program as required by the federal Clean Air Act. The Board shall ~~also effect~~ *promulgate*
 475 *regulations establishing* permit application fee amounts not to exceed \$30,000 from applicants for a
 476 permit for a new major stationary source. The permit application fee amount paid shall be credited
 477 towards the amount of annual fees owed pursuant to this section during the first two years of the
 478 source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the
 479 Department of Accounts.

480 C. When adopting regulations for permit program fees for air pollution sources, the Board shall take
 481 into account the permit fees charged in neighboring states and the importance of not placing existing or
 482 prospective industry in the Commonwealth at a competitive disadvantage.

483 D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of
 484 the implementation of the permit fee program and provide this evaluation in writing to the Senate
 485 Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance and
 486 Appropriations, the House Committee on Appropriations, the House Committee on Agriculture,
 487 Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include
 488 a report on the total fees collected, the amount of general funds allocated to the Department, the
 489 Department's use of the fees and the general funds, the number of permit applications received, the
 490 number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit

491 processing.

492 E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall
493 be given to cover the costs of processing permit applications in order to more efficiently issue permits.

494 F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund
495 appropriation to the Department.

496 G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional
497 permit programs that may be required by the federal government and administered by the ~~Board~~
498 *Department*, or any new permit program required by the Code of Virginia.

499 H. The permit program fee regulations promulgated pursuant to this section shall not become
500 effective until July 1, 1993.

501 I. [Expired.]

502 **§ 10.1-1322.4. Permit modifications for alternative fuels or raw materials.**

503 Unless required by federal law or regulation, no additional permit or permit modifications shall be
504 required by the ~~Board~~ for the use, by any source, of an alternative fuel or raw material, if the owner
505 demonstrates to the ~~Board~~ that as a result of trial burns at his facility or other facilities or other
506 sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are
507 decreased. To the extent allowed by federal law or regulation, no demonstration shall be required for the
508 use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture
509 thereof in place of the same quantity of residual oil to fire industrial boilers.

510 **§ 10.1-1333. Permitting process for clean coal projects.**

511 To the extent authorized by federal law, the ~~Board~~ *Department of Environmental Quality* shall
512 implement permit processes that facilitate the construction of clean coal projects in the Commonwealth
513 by, among such other actions as it deems appropriate, giving priority to processing permit applications
514 for clean coal projects.

515 **§ 15.2-2403.3. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts**
516 **2017, c. 345) Stormwater service districts; allocation of revenues.**

517 Any town located within a stormwater service district created pursuant to this chapter shall be
518 entitled to any revenues collected within the town pursuant to subdivision 6 of § 15.2-2403, subject to
519 the limitations set forth therein, so long as the town maintains its own municipal separate storm sewer
520 system (MS4) permit issued by the ~~State Water Control Board~~ *Department of Environmental Quality* or
521 maintains its own stormwater service district.

522 **§ 15.2-5101. Definitions.**

523 As used in this chapter, unless the context requires a different meaning:

524 "Authority" means an authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152
525 et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the
526 principal functions thereof.

527 "Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of
528 an authority for the payment of money.

529 "Cost," as applied to a system, includes the purchase price of the system or the cost of acquiring all
530 of the capital stock of the corporation owning such system and the amount to be paid to discharge all of
531 its obligations in order to vest title to the system or any part thereof in the authority; the cost of
532 improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the
533 cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to
534 and during construction and for one year after completion of construction; any deposit to any bond
535 interest and principal reserve account, start-up costs and reserves and expenditures for operating capital;
536 cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues;
537 other expenses necessary or incident to the determining of the feasibility or practicability of any such
538 acquisition, improvement, or construction; administrative expenses and such other expenses as may be
539 necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or
540 construction of any such system and the placing of the system in operation by the authority. Any
541 obligation or expense incurred by an authority in connection with any of the foregoing items of cost and
542 any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the
543 provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other
544 technical or professional services which may be utilized in the acquisition, improvement or construction
545 of such system is a part of the cost of such system.

546 "Cost of improvements" means the cost of constructing improvements and includes the cost of all
547 labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired
548 which are deemed necessary for such construction; interest during any period of disuse during such
549 construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal
550 expenses, plans, specifications; and such other expenses as may be necessary or incident to such
551 construction.

552 "Federal agency" means the United States of America or any department, agency, instrumentality, or
553 bureau thereof.

554 "Green roof" means a roof or partially covered roof consisting of plants, soil, or another lightweight
555 growing medium that is installed on top of a waterproof membrane and designed in accordance with the
556 Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in
557 the Virginia BMP Clearinghouse.

558 "Improvements" means such repairs, replacements, additions, extensions and betterments of and to a
559 system as an authority deems necessary to place or maintain the system in proper condition for the safe,
560 efficient and economical operation thereof or to provide service in areas not currently receiving such
561 service.

562 "Owner" includes persons, federal agencies, and units of the Commonwealth having any title or
563 interest in any system, or the services or facilities to be rendered thereby.

564 "Political subdivision" means a locality or any institution or commission of the Commonwealth of
565 Virginia.

566 "Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid,
567 semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural
568 operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved
569 materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial
570 discharges which are sources subject to a permit from the ~~State Water Control Board~~ *Department of*
571 *Environmental Quality*, or (iii) source, special nuclear, or by-product material as defined by the Federal
572 Atomic Energy Act of 1954 (42 U.S.C. § 2011, et seq.), as amended.

573 "Refuse collection and disposal system" means a system, plant or facility designed to collect,
574 manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and
575 equipment for use in connection therewith.

576 "Sewage" means the water-carried wastes created in and carried, or to be carried, away from
577 residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other
578 private or public buildings, together with such surface or ground water and household and industrial
579 wastes as may be present.

580 "Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station,
581 constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary
582 landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of
583 sewage, industrial waste or other wastes.

584 "Sewer system" or "sewage system" means pipelines or conduits, pumping stations, and force mains,
585 and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage,
586 industrial wastes or other wastes to a plant of ultimate disposal.

587 "Stormwater control system" means a structural system of any type that is designed to manage the
588 runoff from land development projects or natural systems designated for such purposes, including,
589 without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating
590 stations, and other plants, structures, and real and personal property used for support of the system.

591 "System" means any sewage disposal system, sewer system, stormwater control system, water or
592 waste system, and for authorities created under Article 6 (§ 15.2-5152 et seq.) of this chapter, such
593 facilities as may be provided by the authority under § 15.2-5158.

594 "Unit" means any department, institution or commission of the Commonwealth; any public corporate
595 instrumentality thereof; any district; or any locality.

596 "Water or waste system" means any water system, sewer system, sewage disposal system, or refuse
597 collection and disposal system, or any combination of such systems. "Water system" means all plants,
598 systems, facilities or properties used or useful or having the present capacity for future use in connection
599 with the supply or distribution of water, or facilities incident thereto, and any integral part thereof,
600 including water supply systems, water distribution systems, dams and facilities for the generation or
601 transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations,
602 standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances,
603 and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient
604 by the authority for the operation thereof but not including dams or facilities for the generation or
605 transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used
606 or useful or having the present capacity for future use in connection with the supply or distribution of
607 water.

608 **§ 28.2-1205.1. Coordinated review of water resources projects.**

609 A. Applications for water resources projects that require a Virginia Marine Resources permit and an
610 individual Virginia Water Protection Permit under § 62.1-44.15:20 shall be submitted and processed
611 through a joint application and review process.

612 B. The Commissioner and the Director of the Department of Environmental Quality, in consultation
613 with the Virginia Institute of Marine Science, the Department of Wildlife Resources, the Department of

614 Historic Resources, the Department of Health, the Department of Conservation and Recreation, the
615 Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state
616 agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring
617 both permits.

618 C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the
619 initial application for the project shall be advertised simultaneously by the Commission and the
620 Department of Environmental Quality; (ii) project reviews shall be completed by all state agencies that
621 have been asked to review and provide comments, within 45 days of project notification by the
622 Commission and the Department of Environmental Quality; (iii) the Commission and the ~~State Water~~
623 ~~Control Board~~ *Department of Environmental Quality* shall coordinate permit issuance and, to the extent
624 practicable, shall take action on the permit application no later than one year after the agencies have
625 received complete applications; (iv) to the extent practicable, the Commission and the ~~State Water~~
626 ~~Control Board~~ *Department of Environmental Quality* shall take action concurrently, but no more than six
627 months apart; and (v) upon taking its final action on each permit, the Commission and the ~~State Water~~
628 ~~Control Board~~ *Department of Environmental Quality* shall provide each other with notification of its
629 action and any and all supporting information, including any background materials or exhibits used in
630 the application.

631 **§ 46.2-1601. Licensing of dealers of salvage vehicles; fees.**

632 A. It shall be unlawful for any person to engage in business in the Commonwealth as an auto
633 recycler, salvage pool, or vehicle removal operator without first acquiring a license issued by the
634 Commissioner for each such business at each location. The fee for the first such license issued or
635 renewed under this chapter shall be \$100 per license year or part thereof. The fee for each additional
636 license issued or renewed under this chapter for the same location shall be \$25 per license year or part
637 thereof. However, no fee shall be charged for supplemental locations of a business located within 500
638 yards of the licensed location.

639 B. No license shall be issued or renewed for any person unless (i) the licensed business contains at
640 least 600 square feet of enclosed space, (ii) the licensed business is shown to be in compliance with all
641 applicable zoning ordinances, and (iii) the applicant may (a) certify to the Commissioner that the
642 licensed business is permitted under a Virginia Pollutant Discharge Elimination System individual or
643 general permit issued by the ~~State Water Control Board~~ *Department of Environmental Quality* for
644 discharges of storm water associated with industrial activity and provides the permit number(s) from
645 such permit(s) or (b) certify to the Commissioner that the licensed business is otherwise exempt from
646 such permitting requirements. Nothing in this section shall authorize any person to act as a motor
647 vehicle dealer or salesperson without being licensed under Chapter 15 (§ 46.2-1500 et seq.) and meeting
648 all requirements imposed by such chapter.

649 C. Licenses issued under this section shall be deemed not to have expired if the renewal application
650 and required fees as set forth in subsection A are received by the Commissioner or postmarked not more
651 than 30 days after the expiration date of such license. Whenever the renewal application is received by
652 the Commissioner or postmarked not more than 30 days after the expiration date of such license, the
653 license fees shall be 150 percent of the fees provided for in subsection A.

654 D. The Commissioner may offer an optional multiyear license for any license set forth in this
655 section. When such option is offered and chosen by the licensee, all fees due at the time of licensing
656 shall be multiplied by the number of years for which the license will be issued.

657 **§ 62.1-44.3. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.**
658 **345) Definitions.**

659 Unless a different meaning is required by the context, the following terms as used in this chapter
660 shall have the meanings hereinafter respectively ascribed to them:

661 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are
662 not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste
663 assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows
664 for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection
665 of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream
666 beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic
667 (including public water supply), agricultural uses, electric power generation, commercial, and industrial
668 uses.

669 "Board" means the State Water Control Board. *However, when used outside the context of the*
670 *promulgation of regulations, including regulations to establish general permits, pursuant to this chapter,*
671 *"Board" means the Department of Environmental Quality.*

672 "Certificate" means any certificate issued by the ~~Board~~ *Department*.

673 "Department" means the Department of Environmental Quality.

674 "Director" means the Director of the Department of Environmental Quality.

675 "Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine,
676 coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every
677 other industry or plant or works the operation of which produces industrial wastes or other wastes or
678 which may otherwise alter the physical, chemical or biological properties of any state waters.

679 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

680 "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture,
681 trade, or business or from the development of any natural resources.

682 "The law" or "this law" means the law contained in this chapter as now existing or hereafter
683 amended.

684 "Member" means a member of the Board.

685 "Normal agricultural activities" means those activities defined as an agricultural operation in
686 § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation
687 but shall not include any activity for which a permit would have been required as of January 1, 1997,
688 under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

689 "Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any
690 activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include
691 any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C.
692 § 1344 or any regulations promulgated pursuant thereto.

693 "Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar,
694 oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution
695 in any state waters.

696 "Owner" means the Commonwealth or any of its political subdivisions, including but not limited to
697 sanitation district commissions and authorities and any public or private institution, corporation,
698 association, firm, or company organized or existing under the laws of this or any other state or country,
699 or any officer or agency of the United States, or any person or group of persons acting individually or
700 as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for
701 any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any
702 facility or operation that has the capability to alter the physical, chemical, or biological properties of
703 state waters in contravention of § 62.1-44.5.

704 "Person" means an individual, corporation, partnership, association, governmental body, municipal
705 corporation, or any other legal entity.

706 "Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

707 "Pollution" means such alteration of the physical, chemical, or biological properties of any state
708 waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or
709 injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b)
710 unsuitable with reasonable treatment for use as present or possible future sources of public water supply;
711 or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided
712 that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or
713 deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not
714 sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to
715 state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by
716 any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly
717 established by the Board, are "pollution" for the terms and purposes of this chapter.

718 "Pretreatment requirements" means any requirements arising under the Board's pretreatment
719 regulations including the duty to allow or carry out inspections, entry, or monitoring activities; any rules,
720 regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting
721 requirements imposed by the owner of a publicly owned treatment works or by the regulations of the
722 Board.

723 "Pretreatment standards" means any standards of performance or other requirements imposed by
724 regulation of the Board upon an industrial user of a publicly owned treatment works.

725 "Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial
726 wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur.
727 Specifically excluded from this definition is "gray water."

728 "Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to
729 produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

730 "Regulation" means a regulation issued under § 62.1-44.15 (10).

731 "Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in
732 accordance with the requirements of the Board.

733 "Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to
734 § 62.1-44.15 (7).

735 "Ruling" means a ruling issued under § 62.1-44.15 (9).

736 "Sewage" means the water-carried human wastes from residences, buildings, industrial establishments

737 or other places together with such industrial wastes and underground, surface, storm, or other water as
 738 may be present.

739 "Sewage treatment works" or "treatment works" means any device or system used in the storage,
 740 treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including
 741 but not limited to pumping, power, and other equipment, and appurtenances, and any works, including
 742 land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal
 743 of residues or effluent resulting from such treatment. These terms shall not include onsite sewage
 744 systems or alternative discharging sewage systems.

745 "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other
 746 construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial
 747 wastes or other wastes to a point of ultimate disposal.

748 "Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

749 "Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

750 "State waters" means all water, on the surface and under the ground, wholly or partially within or
 751 bordering the Commonwealth or within its jurisdiction, including wetlands.

752 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a
 753 frequency and duration sufficient to support, and that under normal circumstances do support, a
 754 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally
 755 include swamps, marshes, bogs and similar areas.

756 § 62.1-44.3. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

757 **Definitions.**

758 Unless a different meaning is required by the context, the following terms as used in this chapter
 759 shall have the meanings hereinafter respectively ascribed to them:

760 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are
 761 not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste
 762 assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows
 763 for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection
 764 of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream
 765 beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic
 766 (including public water supply), agricultural uses, electric power generation, commercial, and industrial
 767 uses.

768 "Board" means the State Water Control Board. *However, when used outside the context of the*
 769 *promulgation of regulations, including regulations to establish general permits, pursuant to this chapter,*
 770 *"Board" means the Department of Environmental Quality.*

771 "Certificate" means any certificate or permit issued by the ~~Board~~ *Department.*

772 "Department" means the Department of Environmental Quality.

773 "Director" means the Director of the Department of Environmental Quality.

774 "Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine,
 775 coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every
 776 other industry or plant or works the operation of which produces industrial wastes or other wastes or
 777 which may otherwise alter the physical, chemical or biological properties of any state waters.

778 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

779 "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture,
 780 trade, or business or from the development of any natural resources.

781 "Land-disturbance approval" means an approval allowing a land-disturbing activity to commence
 782 issued by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements
 783 of § 62.1-44.15:34 have been met or (ii) a Virginia Erosion and Sediment Control Program authority
 784 after the requirements of § 62.1-44.15:55 have been met.

785 "The law" or "this law" means the law contained in this chapter as now existing or hereafter
 786 amended.

787 "Member" means a member of the Board.

788 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as
 789 a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal
 790 streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

791 1. Owned or operated by a federal entity, state, city, town, county, district, association, or other
 792 public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial
 793 wastes, stormwater, or other wastes, including a special district under state law such as a sewer district,
 794 flood control district, drainage district or similar entity, or a designated and approved management
 795 agency under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface
 796 waters;

797 2. Designed or used for collecting or conveying stormwater;

798 3. Not a combined sewer; and
799 4. Not part of a publicly owned treatment works.

800 "Normal agricultural activities" means those activities defined as an agricultural operation in
801 § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation
802 but shall not include any activity for which a permit would have been required as of January 1, 1997,
803 under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

804 "Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any
805 activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include
806 any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C.
807 § 1344 or any regulations promulgated pursuant thereto.

808 "Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar,
809 oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution
810 in any state waters.

811 "Owner" means the Commonwealth or any of its political subdivisions, including but not limited to
812 sanitation district commissions and authorities and any public or private institution, corporation,
813 association, firm, or company organized or existing under the laws of this or any other state or country,
814 or any officer or agency of the United States, or any person or group of persons acting individually or
815 as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for
816 any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any
817 facility or operation that has the capability to alter the physical, chemical, or biological properties of
818 state waters in contravention of § 62.1-44.5.

819 "Person" means an individual, corporation, partnership, association, governmental body, municipal
820 corporation, or any other legal entity.

821 "Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

822 "Pollution" means such alteration of the physical, chemical, or biological properties of any state
823 waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or
824 injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b)
825 unsuitable with reasonable treatment for use as present or possible future sources of public water supply;
826 or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided
827 that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or
828 deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not
829 sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to
830 state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by
831 any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly
832 established by the Board, are "pollution" for the terms and purposes of this chapter.

833 "Pretreatment requirements" means any requirements arising under the Board's pretreatment
834 regulations including the duty to allow or carry out inspections, entry, or monitoring activities; any rules,
835 regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting
836 requirements imposed by the owner of a publicly owned treatment works or by the regulations of the
837 Board.

838 "Pretreatment standards" means any standards of performance or other requirements imposed by
839 regulation of the Board upon an industrial user of a publicly owned treatment works.

840 "Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial
841 wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur.
842 Specifically excluded from this definition is "gray water."

843 "Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to
844 produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

845 "Regulation" means a regulation issued under subdivision (10) of § 62.1-44.15.

846 "Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in
847 accordance with the requirements of the Board.

848 "Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to
849 subdivision (7) of § 62.1-44.15.

850 "Ruling" means a ruling issued under subdivision (9) of § 62.1-44.15.

851 "Sewage" means the water-carried human wastes from residences, buildings, industrial establishments
852 or other places together with such industrial wastes and underground, surface, storm, or other water as
853 may be present.

854 "Sewage treatment works" or "treatment works" means any device or system used in the storage,
855 treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including
856 but not limited to pumping, power, and other equipment, and appurtenances, and any works, including
857 land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal
858 of residues or effluent resulting from such treatment. These terms shall not include onsite sewage
859 systems or alternative discharging sewage systems.

860 "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other
861 construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial
862 wastes or other wastes to a point of ultimate disposal.

863 "Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

864 "Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

865 "State waters" means all water, on the surface and under the ground, wholly or partially within or
866 bordering the Commonwealth or within its jurisdiction, including wetlands.

867 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a
868 frequency and duration sufficient to support, and that under normal circumstances do support, a
869 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally
870 include swamps, marshes, bogs and similar areas.

871 **§ 62.1-44.6:1. Permit rationale.**

872 *In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and*
873 *concise statement of the legal basis, scientific rationale, and justification for the decision reached. When*
874 *the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in*
875 *consultation with legal counsel, provide a clear and concise statement explaining the reason for the*
876 *denial, the scientific justification for the same, and how the Department's decision is in compliance with*
877 *applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by*
878 *certified mail to the permittee or applicant.*

879 **§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget**
880 **preparation.**

881 The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in
882 § 2.2-106. The Executive Director shall serve as executive officer and devote his whole time to the
883 performance of his duties, and he shall have such administrative powers as are conferred upon him by
884 the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties
885 invested in it by this chapter except the adoption and promulgation of standards, rules and regulations;
886 and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders
887 in cases of emergency as described in §§ 62.1-44.15 (8b) and 62.1-44.34:20 of this chapter. The
888 Executive Director is further authorized to employ such consultants and full-time technical and clerical
889 workers as are necessary and within the available funds to carry out the purposes of this chapter.

890 It shall be the duty of the Executive Director to exercise general supervision and control over the
891 quality and management of all state waters and to administer and enforce this chapter, and all
892 certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board.
893 The Executive Director shall prepare, approve, and submit all requests for appropriations and be
894 responsible for all expenditures pursuant to appropriations. The Executive Director shall be vested with
895 all the authority of the Board when it is not in session, except for the Board's authority to consider
896 permits pursuant to ~~§ 62.1-44.15:02~~ and to issue special orders pursuant to subdivisions (8a) and (8b) of
897 § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the
898 Executive Director have the authority to adopt or promulgate any regulation.

899 **§ 62.1-44.15:81. Application and preparation of draft certification conditions.**

900 A. Any applicant for a federal license or permit for a natural gas transmission pipeline greater than
901 36 inches inside diameter subject to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) shall
902 submit a separate application, at the same time the Joint Permit Application is submitted, to the
903 Department containing a description of all activities that will occur in upland areas, including activities
904 in or related to (i) slopes with a grade greater than 15 percent; (ii) karst geology features, including
905 sinkholes and underground springs; (iii) proximity to sensitive streams and wetlands identified by the
906 Department of Conservation and Recreation or the Department of Wildlife Resources; (iv) seasonally
907 high water tables; (v) water impoundment structures and reservoirs; and (vi) areas with highly erodible
908 soils, low pH, and acid sulfate soils. Concurrently with the Joint Permit Application, the applicant shall
909 also submit a detailed erosion and sediment control plan and stormwater management plan subject to
910 Department review and approval.

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

917 C. At any time during the review of the application, but prior to issuing a certification pursuant to
918 this article, the Department may issue an information request to the applicant for any relevant additional
919 information necessary to determine (i) if any activities related to the applicant's project in upland areas
920 are likely to result in a discharge to state waters and (ii) how the applicant proposes to minimize water

921 quality impacts to the maximum extent practicable to protect water quality. The information request
 922 shall provide a reasonable amount of time for the applicant to respond.

923 D. The Department shall review the information contained in the application, the response to the
 924 information request in subsection B, and any additional information obtained through any information
 925 requests issued pursuant to subsection C to determine if any activities described in the application or in
 926 any additional information requests (i) are likely to result in a discharge to state waters with the
 927 potential to adversely impact water quality and (ii) will not be addressed by the Virginia Water
 928 Protection Permit issued for the activity pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.). The
 929 Department of Wildlife Resources, the Department of Conservation and Recreation, the Department of
 930 Health, and the Department of Agriculture and Consumer Services shall consult with the Department
 931 during the review of the application and any additional information obtained through any information
 932 requests issued pursuant to subsection B or C. Following the conclusion of its review, the Department
 933 shall develop a draft certification or denial. A draft certification, including (i) any additional conditions
 934 for activities in upland areas necessary to protect water quality and (ii) a condition that the applicant
 935 shall not commence land-disturbing activity prior to approval by the Department of the erosion and
 936 sediment control plan and stormwater management plan required pursuant to subsection E, shall be
 937 noticed for public comment and potential issuance by the Department ~~or the Board pursuant to~~
 938 ~~§ 62.1-44.15:02~~. The Department shall make the information contained in the application and any
 939 additional information obtained through any information requests issued pursuant to subsection B or C
 940 available to the public.

941 E. Notwithstanding any applicable annual standards and specifications for erosion and sediment
 942 control or stormwater management pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4
 943 (§ 62.1-44.15:51 et seq.), the applicant shall not commence land-disturbing activity prior to resolution of
 944 any unresolved issues identified in subsection B to the satisfaction of the Department and approval by
 945 the Department of an erosion and sediment control plan and stormwater management plan in accordance
 946 with applicable regulations. The Department shall act on any plan submittal within 60 days after initial
 947 submittal of a completed plan to the Department. The Department may issue either approval or
 948 disapproval and shall provide written rationale for its decision. The Department shall act on any plan
 949 that has been previously disapproved within 30 days after the plan has been revised and resubmitted for
 950 approval.

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

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

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

962 **§ 62.1-44.15:83. Requests for public hearing, hearings, and final decisions procedures.**

963 A. The issuance of a certification pursuant to this article shall be a permit action ~~for purposes of~~
 964 ~~§ 62.1-44.15:02~~.

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

967 **§ 62.1-104. Definitions.**

968 (1) Except as modified below, the definitions contained in Title 1 shall apply in this chapter.

969 (2) "Board" means the State Water Control Board. *However, when used outside the context of the*
 970 *promulgation of regulations, including regulations to establish general permits, pursuant to this chapter,*
 971 *"Board" means the Department of Environmental Quality.*

972 (3) "Impounding structure" means a man-made device, whether a dam across a watercourse or other
 973 structure outside a watercourse, used or to be used for the authorized storage of flood waters for
 974 subsequent beneficial use.

975 (4) "Watercourse" means a natural channel having a well-defined bed and banks and in which water
 976 flows when it normally does flow. For the purposes hereof they shall be limited to rivers, creeks,
 977 streams, branches, and other watercourses which are nonnavigable in fact and which are wholly within
 978 the jurisdiction of the Commonwealth.

979 (5) "Riparian land" is land which is contiguous to and touches a watercourse. It does not include
 980 land outside the watershed of the watercourse. Real property under common ownership and which is not
 981 separated from riparian land by land of any other ownership shall likewise be deemed riparian land,
 982 notwithstanding that such real property is divided into tracts and parcels which may not bound upon the

983 watercourse.

984 (6) "Riparian owner" is an owner of riparian land.

985 (7) "Average flow" means the average discharge of a stream at a particular point and normally is
986 expressed in cubic feet per second. It may be determined from actual measurements or computed from
987 the most accurate information available.

988 (8) "Diffused surface waters" are those which, resulting from precipitation, flow down across the
989 surface of the land until they reach a watercourse, after which they become parts of streams.

990 (9) "Floodwaters" means water in a stream which is over and above the average flow.

991 (10) "Court" means the circuit court of the county or city in which an impoundment is located or
992 proposed to be located.

993 **§ 62.1-242. Definitions.**

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

995 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not
996 limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation,
997 navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to
998 domestic (including public water supply), agricultural, electric power generation, commercial, and
999 industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority
1000 beneficial uses.

1001 "Board" means the State Water Control Board. *However, when used outside the context of the*
1002 *promulgation of regulations, including regulations to establish general permits, pursuant to this chapter,*
1003 *"Board" means the Department of Environmental Quality.*

1004 "Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is
1005 returned to the stream without substantial diminution in quantity at or near the point from which it was
1006 taken and would not result in or exacerbate low flow conditions.

1007 "Surface water withdrawal permit" means a document issued by the Board evidencing the right to
1008 withdraw surface water.

1009 "Surface water management area" means a geographically defined surface water area in which the
1010 Board has deemed the levels or supply of surface water to be potentially adverse to public welfare,
1011 health and safety.

1012 "Surface water" means any water in the Commonwealth, except ground water, as defined in
1013 § 62.1-255.

1014 **§ 62.1-248.2. Permit rationale.**

1015 *In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and*
1016 *concise statement of the legal basis, scientific rationale, and justification for the decision reached. When*
1017 *the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in*
1018 *consultation with legal counsel, provide a clear and concise statement explaining the reason for the*
1019 *denial, the scientific justification for the same, and how the Department's decision is in compliance with*
1020 *applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by*
1021 *certified mail to the permittee or applicant.*

1022 **§ 62.1-255. Definitions.**

1023 As used in this chapter, unless the context requires otherwise:

1024 "Agricultural irrigation" means irrigation that is used to support any operation devoted to the bona
1025 fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind;
1026 meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and
1027 harvest of products from silvicultural activity.

1028 "Beneficial use" includes domestic (including public water supply), agricultural, commercial, and
1029 industrial uses.

1030 "Board" means the State Water Control Board. *However, when used outside the context of the*
1031 *promulgation of regulations, including regulations to establish general permits, pursuant to this chapter,*
1032 *"Board" means the Department of Environmental Quality.*

1033 "Department" means the Department of Environmental Quality.

1034 "Eastern Shore Groundwater Management Area" means the ground water management area declared
1035 by the Board encompassing the Counties of Accomack and Northampton.

1036 "Ground water" means any water, except capillary moisture, beneath the land surface in the zone of
1037 saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or
1038 partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in
1039 which such water stands, flows, percolates or otherwise occurs.

1040 "Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal
1041 of a specified quantity of ground water in a ground water management area.

1042 "Irrigation" means the controlled application of water through man-made systems to supply water
1043 requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

1044 "Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

1045 "Person" means any and all persons, including individuals, firms, partnerships, associations, public or
1046 private institutions, municipalities or political subdivisions, governmental agencies, or private or public
1047 corporations organized under the laws of the Commonwealth or any other state or country.

1048 "Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water
1049 is not confined by an overlying impermeable zone.

1050 **§ 62.1-263.1. Permit rationale.**

1051 *In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and*
1052 *concise statement of the legal basis, scientific rationale, and justification for the decision reached. When*
1053 *the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in*
1054 *consultation with legal counsel, provide a clear and concise statement explaining the reason for the*
1055 *denial, the scientific justification for the same, and how the Department's decision is in compliance with*
1056 *applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by*
1057 *certified mail to the permittee or applicant.*

1058 **2. That §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia are repealed.**

1059 **3. That any permits or orders issued by the Air Pollution Control Board or the State Water**
1060 **Control Board prior to the effective date of this act shall continue in full force and are enforceable**
1061 **by the Department of Environmental Quality.**

1062 **4. That nothing in this act shall be construed to limit or impact § 3.2-301 or 15.2-2288.6 of the**
1063 **Code of Virginia.**

1064 **5. That at each regular meeting of the Air Pollution Control Board and the State Water Control**
1065 **Board (the Boards), the Department of Environmental Quality (the Department) shall provide an**
1066 **overview and update regarding any controversial permits pending before the Department that are**
1067 **relevant to each board. Immediately after such presentation by the Department, the Boards shall**
1068 **have an opportunity to respond to the Department's presentation and provide commentary**
1069 **regarding such pending permits. Before rendering a final decision on a controversial permit, the**
1070 **Department shall publish a summary of public comments received during the applicable public**
1071 **comment period and public hearing. After such publication, the Department shall publish**
1072 **responses to the public comment summary and hold a public hearing to provide an opportunity**
1073 **for individuals who previously commented, either at a public hearing or in writing during the**
1074 **applicable public comment period, to respond to the Department's public comment summary and**
1075 **response. No new information will be accepted at that time.**

1076 **For purposes of this enactment, "controversial permit" means an air or water permitting action**
1077 **for which a public hearing has been granted pursuant to the provisions of the sixth enactment of this**
1078 **act. "Controversial permit" also means an air permitting action where a public hearing is**
1079 **required for (i) the construction of a new major source or for a major modification to an existing**
1080 **source, (ii) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii)**
1081 **a major modification to an existing source that is a fossil fuel-fired generating facility with a**
1082 **capacity of 500 megawatts or more, (iv) a new fossil fuel-fired compressor station facility used to**
1083 **transport natural gas, or (v) a major modification to an existing source that is a fossil fuel-fired**
1084 **compressor station facility used to transport natural gas.**

1085 **6. That any changes to regulations necessary to implement the provisions of this act shall include**
1086 **the following criteria for requesting and granting a public hearing on a permit action during a**
1087 **public comment period in those instances where a public hearing is not mandatory under state or**
1088 **federal law or regulation. During the public comment period on permit action, interested persons**
1089 **may request a public hearing to contest such action or the terms and conditions thereof. Requests**
1090 **for a public hearing shall contain the following information: (i) the name and postal mailing or**
1091 **email address of the requester; (ii) the names and addresses of all persons for whom the requester**
1092 **is acting as a representative (for the purposes of this requirement, "person" includes an**
1093 **unincorporated association); (iii) the reason for the request for a public hearing; (iv) a brief,**
1094 **informal statement setting forth the factual nature and the extent of the interest of the requester**
1095 **or of the persons for whom the requester is acting as representative in the application or tentative**
1096 **determination, including an explanation of how and to what extent such interest would be directly**
1097 **and adversely affected by the issuance, denial, modification, or revocation of the permit in**
1098 **question; and (v) where possible, specific references to the terms and conditions of the permit in**
1099 **question, together with suggested revisions and alterations of those terms and conditions that the**
1100 **requester considers are needed to conform the permit to the intent and provisions of the basic**
1101 **laws of the State Air Pollution Control Board or the State Water Control Board, as applicable.**
1102 **Upon completion of the public comment period on a permit action, the Director of the Department**
1103 **of Environmental Quality shall review all timely requests for public hearing filed during the public**
1104 **comment period on the permit action and within 30 calendar days following the expiration of the**
1105 **time period for the submission of requests shall grant a public hearing, unless the permittee or**

1106 applicant agrees to a later date, if the Director finds the following: (a) that there is a significant
1107 public interest in the issuance, denial, modification, or revocation of the permit in question as
1108 evidenced by receipt of a minimum of 25 individual requests for a public hearing; (b) that the
1109 requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or
1110 revocation of the permit in question; and (c) that the action requested by the interested party is
1111 not on its face inconsistent with, or in violation of, the basic laws of the State Air Pollution
1112 Control Board if the permit action is an air permit action, or the basic laws of the State Water
1113 Control Board if the permit action is a water permit action, federal law, or any regulation
1114 promulgated thereunder. The Director of the Department of Environmental Quality shall,
1115 forthwith, notify by email or mail at his last known address (1) each requester and (2) the
1116 applicant or permittee of the decision to grant or deny a public hearing. If the request for a public
1117 hearing is granted, the Director shall schedule the hearing at a time between 45 and 75 days after
1118 emailing or mailing of the notice of the decision to grant the public hearing. The Director shall
1119 cause, or require the applicant to publish, notice of a public hearing to be published once, in a
1120 newspaper of general circulation in the city or county where the facility or operation that is the
1121 subject of the permit or permit application is located, at least 30 days before the hearing date. In
1122 making its decision, the Department shall consider (A) the verbal and written comments received
1123 during the public comment period and public hearing made part of the record, (B) any
1124 commentary of the Board, and (C) the agency files. The public comment period shall remain open
1125 for 15 days after the close of the public hearing if required by § 10.1-1307.01 of the Code of
1126 Virginia, as amended by this act, or § 62.1-44.15:01 of the Code of Virginia. In addition, the
1127 Director may, in his discretion, convene a public hearing on a permit action.