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HOUSE BILL NO. 2189

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact § 62.1-44.5, as it is currently effective and as it shall become effective, of the Code of Virginia, and to amend the Code of Virginia by adding in Article 2 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:5.3, relating to requirements to test for PFAS; publicly owned treatment works; discharges into state waters.

Patrons—Rasoul, Hudson, Bennett-Parker, Clark, Guzman and Kory; Senator: Edwards

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.5, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:5.3, as follows:

§ 62.1-44.5. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.

B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

C. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of any agent or material listed by the U.S. Environmental Protection Agency pursuant to § 307(a) of the federal Clean Water Act into or upon state waters or (ii) a discharge of any agent or material listed by the U.S. Environmental Protection Agency pursuant to § 307(a) of the federal Clean Water Act that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly test both the discharged agent or material and the receiving state waters or potential receiving state waters for perfluoroalkyl and polyfluoroalkyl substances. The results of such tests shall be transmitted within 24 hours of receipt of the test results to the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge.

§ 62.1-44.5. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate, land-disturbance approval, or permit issued by the Board

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59 or other entity authorized by the Board to issue a certificate, land-disturbance approval, or permit
60 pursuant to this chapter, it shall be unlawful for any person to:

61 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious
62 substances;

63 2. Excavate in a wetland;

64 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them
65 detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic
66 or industrial consumption, or for recreation, or for other uses;

67 4. On and after October 1, 2001, conduct the following activities in a wetland:

68 a. New activities to cause draining that significantly alters or degrades existing wetland acreage or
69 functions;

70 b. Filling or dumping;

71 c. Permanent flooding or impounding; or

72 d. New activities that cause significant alteration or degradation of existing wetland acreage or
73 functions; or

74 5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land
75 disturbing activities.

76 B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i)
77 a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or
78 upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon
79 learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of
80 the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant
81 to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written
82 notice to the Director of the Department of Environmental Quality shall follow initial notice within the
83 time frame specified by the federal Clean Water Act.

84 C. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a
85 discharge of any agent or material listed by the U.S. Environmental Protection Agency pursuant to
86 § 307(a) of the federal Clean Water Act into or upon state waters or (ii) a discharge of any agent or
87 material listed by the U.S. Environmental Protection Agency pursuant to § 307(a) of the federal Clean
88 Water Act that may reasonably be expected to enter state waters shall, upon learning of the discharge,
89 promptly test both the discharged agent or material and the receiving state waters or potential receiving
90 state waters for perfluoroalkyl and polyfluoroalkyl substances. The results of such tests shall be
91 transmitted within 24 hours of receipt of the test results to the coordinator of emergency services
92 appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the
93 discharge.

94 **§ 62.1-44.15:5.3. Requirements to test for PFAS; publicly owned treatment works.**

95 A. As used in this section, "PFAS" means a class of fluorinated organic chemicals containing at least
96 one fully fluorinated carbon atom, also referred to as perfluoroalkyl and polyfluoroalkyl substances.

97 B. The pretreatment standards adopted by the Board shall require any industrial user of a publicly
98 owned treatment works that receives and cleans, repairs, refurbishes, or processes any items that may
99 contain PFAS to test its wastestream for PFAS prior to and after cleaning, repairing, refurbishing, or
100 processing such items. The results of the tests shall be transmitted to the receiving publicly owned
101 treatment works within three days of receipt of the test results by the industrial user of the publicly
102 owned treatment works.