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SENATE BILL NO. 765

Offered January 16, 1995

A *BILL to amend and reenact § 62.1-44.15 of the Code of Virginia, relating to duties of the State Water Control Board.*

Patrons—Howell and Nolen; Delegates: Abbitt, Robinson and Wagner

Referred to the Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 62.1-44.15 of the Code of Virginia is amended and reenacted as follows:**

§ 62.1-44.15. Powers and duties.

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

(2) To study and investigate all problems concerned with the quality of state waters and to make reports and recommendations. *Such study and investigation shall include, but not be limited to, the development of (i) a uniform system and form for the submission of information obtained through bioassessments conducted by applicants for Virginia Water Protection Permits or Virginia Pollution Discharge Elimination System Permits for storm water facilities proposed to be located in drainage areas of 200 to 560 acres in size and (ii) a uniform system and form for the submission of monitoring information from holders of storm water management-related permits. An annual analysis and report shall be produced on the information obtained pursuant to the preceding sentence.*

(2a) To study and investigate methods, procedures, devices, appliances, and technologies which could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to assure that present and future water needs of the citizens of the Commonwealth are met.

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to subsection B of § 9-6.14:7.1 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 9-6.14:8, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or cancelling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 9-6.14:1 et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the Commonwealth any moneys which any such agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

(5) To issue certificates for the discharge of sewage, industrial wastes and other wastes into or

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60 adjacent to or the alteration otherwise of the physical, chemical or biological properties of state waters
61 under prescribed conditions and to revoke or amend such certificates.

62 (5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a
63 Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a
64 Virginia Pollution Abatement permit shall not exceed ten years, except that the term of a Virginia
65 Pollution Abatement permit for confined animal feeding operations shall be ten years. The Department
66 of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has
67 been issued at least once every five years. The term of a certificate issued by the Board shall not be
68 extended by modification beyond the maximum duration and the certificate shall expire at the end of the
69 term unless an application for a new permit has been timely filed as required by the regulations of the
70 Board and the Board is unable, through no fault of the permittee, to issue a new permit before the
71 expiration date of the previous permit.

72 (5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a
73 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided
74 by the regulations of the Board:

75 1. The owner has violated any regulation or order of the Board, any condition of a certificate, any
76 provision of this chapter, or any order of a court, where such violation results in a release of harmful
77 substances into the environment or poses a substantial threat of release of harmful substances into the
78 environment or presents a hazard to human health or the violation is representative of a pattern of
79 serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for
80 or inability to comply with applicable laws, regulations, or requirements;

81 2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material
82 fact in applying for a certificate, or in any other report or document required under this law or under the
83 regulations of the Board;

84 3. The activity for which the certificate was issued endangers human health or the environment and
85 can be regulated to acceptable levels by amendment or revocation of the certificate; or

86 4. There exists a material change in the basis on which the permit was issued that requires either a
87 temporary or a permanent reduction or elimination of any discharge controlled by the certificate
88 necessary to protect human health or the environment.

89 (6) To make investigations and inspections, to ensure compliance with any certificates, standards,
90 policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to
91 furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In
92 recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into
93 a memorandum of understanding establishing a common format to consolidate and simplify inspections
94 of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall
95 ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water
96 quality and public health and at the same time avoid any unnecessary administrative burden on those
97 being inspected.

98 (7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing
99 of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to
100 procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this
101 section shall be by such means as the Board may prescribe.

102 (8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by
103 § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct
104 facilities in accordance with final approved plans and specifications to construct such facilities in
105 accordance with final approved plans and specifications, (iii) who have violated the terms and provisions
106 of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to
107 comply with a directive from the Board to comply with such directive, (v) who have contravened duly
108 adopted and promulgated water quality standards and policies to cease and desist from such
109 contravention and to comply with such water quality standards and policies, (vi) who have violated the
110 terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned
111 treatment works to comply with such terms and provisions or (vii) who have contravened any applicable
112 pretreatment standard or requirement to comply with such standard or requirement; and also to issue
113 such orders to require any owner to comply with the provisions of this chapter and any decision of the
114 Board.

115 (8b) Such special orders are to be issued only after a hearing with at least thirty days' notice to the
116 affected owners, of the time, place and purpose thereof, and they shall become effective not less than
117 fifteen days after service as provided in § 62.1-44.12; provided that if the Board finds that any such
118 owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety
119 or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational,
120 commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or
121 hearing, an emergency special order directing the owner to cease such pollution or discharge

immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

(8c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

(8d) With the consent of any owner who has violated or failed, neglected or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in subsection 62.1-44.32 (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection 62.1-44.32 (a) and shall not be subject to the provisions of § 2.1-127. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

The amendments to this section adopted by the 1976 Session of the General Assembly shall not be construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to the effective date of said amendments.

(9) To make such rulings under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

(11) To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) If the owner is a political subdivision of the Commonwealth the action may be brought in any circuit court within the territory embraced by such political subdivision. If the owner is an establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in which such establishment is located. If the owner is an individual or group of individuals the action shall be brought in the circuit court of the city or circuit court of the county in which such person or any of them reside.

(c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though the State Water Control Board were the owner of the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as a defense in bar to any such action.

(d) The proceeds of any recovery had under this subsection shall, when received by the Board, be applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries' management practices as in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any such funds received are hereby appropriated for that purpose.

183 (e) Nothing in this subsection shall be construed in any way to limit or prevent any other action
184 which is now authorized by law by the Board against any owner.

185 (f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who
186 adds or applies any chemicals or other substances that are recommended or approved by the State
187 Department of Health to state waters in the course of processing or treating such waters for public water
188 supply purposes, except where negligence is shown.

189 (12) To administer programs of financial assistance for planning, construction, operation, and
190 maintenance of water quality control facilities for political subdivisions in this Commonwealth.

191 (13) To establish policies and programs for effective area-wide or basin-wide water quality control
192 and management. The Board may develop comprehensive pollution abatement and water quality control
193 plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering
194 proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment
195 facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water
196 quality management and pollution control plan in the watershed or basin as a whole. In making such
197 determinations, the Board is to seek the advice of local, regional, or state planning authorities.

198 (14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that
199 are consistent with the purposes of this chapter; however, no treatment will be less than secondary or its
200 equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the
201 purposes of this chapter.