

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 519

An Act to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 an article numbered 4.1, consisting of sections numbered 62.1-44.19:4 through 62.1-44.19:8, relating to the Water Quality Monitoring, Information and Restoration Act.

[S 1122]

Approved March 18, 1997

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3.1 of Title 62.1 an article numbered 4.1, consisting of sections numbered 62.1-44.19:4 through 62.1-44.19:8, as follows:

Article 4.1.

Water Quality Monitoring, Information and Restoration Act.

§ 62.1-44.19:4. Definitions.

As used in this article unless the context requires a different meaning:

"Clean Water Act" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 et seq.).

"Fully supporting" means those waters meeting the fishable and swimmable goals of the Clean Water Act.

"Impaired waters" means those water bodies or water body segments that are not fully supporting or are partially supporting of the fishable and swimmable goals of the Clean Water Act and include those waters identified in subdivision C 1 of § 62.1-44.19:5 as impaired waters.

"Toxic impaired waters" means those waters identified as impaired due to toxic contamination in the reports prepared pursuant to § 62.1-44.19:5.

"Toxic substance" or "toxics" means those substances listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program as of January 1, 1997.

§ 62.1-44.19:5. Water quality monitoring and reporting.

A. The Board shall develop the reports required by § 1313(d) (hereafter the "303(d) report") and § 1315(b) (hereafter the "305(b) report") of the Clean Water Act in a manner such that the reports will: (i) provide an accurate and comprehensive assessment of the quality of state surface waters; (ii) identify trends in water quality for specific and easily identifiable geographically defined water segments; (iii) provide a basis for developing initiatives and programs to address current and potential water quality impairment; (iv) be consistent and comparable documents; and (v) contain accurate and comparable data that is representative of the state as a whole. The reports shall be produced biennially but shall incorporate at least the preceding five years of data. Data older than five years shall be incorporated when scientifically appropriate for trend analysis. The Board shall conduct monitoring as described in subsection B and consider and incorporate factors as described in subsection C into the reports. The Board may conduct additional monitoring and consider and incorporate other factors or information it deems appropriate or necessary.

B. Monitoring shall be conducted so that it:

1. Establishes consistent siting and monitoring techniques to ensure data reliability, comparability of data collected throughout the state, and ability to determine water quality trends within specific and easily identifiable geographically defined water segments.

2. Expands the percentage of river and stream miles monitored so as ultimately to be representative of all river and stream miles in the state according to a developed plan and schedule. Water monitoring and sampling shall be expanded first to water bodies for which there is credible evidence to support an indication of impairment.

3. Monitors, according to a plan and schedule, for all substances that are discharged to state waters and that are: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act; (iii) subject to water quality standards; or (iv) necessary to determine water quality conditions. The Board shall develop and implement the plan and schedule for the phasing in of monitoring required by this subdivision. The Board shall, upon development of the plan, publish notice in the Virginia Register that the plan is available for public inspection.

4. Provides, according to the plan in subdivision B 3, for increased use, as necessary, beyond 1996 levels, of sediment monitoring as well as macro-invertebrate, benthic organism and fish tissue monitoring, and provides for specific assessments of water quality based on the results of such monitoring.

5. Increases frequency of sample collection at each chemical monitoring station to one or more per

month when scientifically necessary to provide accurate and usable data. If statistical analysis is necessary to resolve issues surrounding potentially low sampling frequency, a sensitivity analysis shall be used to describe both potential overestimation and underestimation of water quality.

6. Utilizes a mobile laboratory or other laboratories to provide independent monitoring and assessments of effluent from permitted industrial and municipal establishments and other discharges to state waters.

7. Utilizes announced and unannounced inspections, and collection and testing of samples from establishments discharging to state surface waters.

C. The 303(d) report shall:

1. In addition to such other categories as the Board deems necessary or appropriate, identify geographically defined water segments as impaired if monitoring or other evidence shows: (i) violations of ambient water quality standards or human health standards; (ii) fishing restrictions or advisories; (iii) shellfish consumption restrictions due to contamination; (iv) nutrient over-enrichment; (v) significant declines in aquatic life biodiversity or populations; or (vi) contamination of sediment at levels which violate water quality standards or threaten aquatic life or human health. Waters identified as "naturally impaired," "fully supporting but threatened," or "evaluated (without monitoring) as impaired" shall be set out in the report in the same format as those listed as "impaired." The Board shall develop and publish a procedure governing its process for defining and determining impaired water segments and shall provide for public comment on the procedure.

2. Include an assessment, conducted in conjunction with other appropriate state agencies, for the attribution of impairment to point and nonpoint sources. The absence of point source permit violations on or near the impaired water shall not conclusively support a determination that impairment is due to nonpoint sources. In determining the cause for impairment, the Board shall consider the cumulative impact of (i) multiple point source discharges, (ii) individual discharges over time, and (iii) nonpoint sources.

D. The 303(d) and 305(b) reports shall:

1. Be developed in consultation with scientists from state universities prior to its submission by the Board to the United States Environmental Protection Agency.

2. Indicate water quality trends for specific and easily identifiable geographically defined water segments and provide summaries of the trends as well as available data and evaluations so that citizens of the Commonwealth can easily interpret and understand the conditions of the geographically defined water segments.

E. The Board shall refer to the 303(d) and 305(b) reports in determining proper staff and resource allocation.

§ 62.1-44.19:6. Citizen right-to-know provisions.

A. The Board, based on the information in the 303(d) and 305(b) reports, shall:

1. Request the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission to post notices at public access points to all toxic impaired waters. The notice shall be prepared by the Board and shall contain (i) the basis for the impaired designation and (ii) a statement of the potential health risks. The Board shall annually notify local newspapers, and persons who request notice, of any posting and its contents. The Board shall coordinate with the Virginia Marine Resources Commission and the Department of Game and Inland Fisheries to assure that adequate notice of posted waters is provided to those purchasing hunting and fishing licenses.

2. Maintain a "citizen hot-line" for citizens to obtain, either telephonically or electronically, information about the condition of waterways, including information on toxics, toxic discharges, permit violations and other water quality related issues.

B. The Board shall provide to a local newspaper the discharge information reported to the Director of the Department of Environmental Quality pursuant to § 62.1-44.5, when the Board determines that the discharge may be detrimental to the public health or may impair beneficial uses of state waters.

§ 62.1-44.19:7. Plans to address impaired waters.

A. The Board shall develop and implement a plan to achieve fully supporting status for impaired waters, except when the impairment is established as naturally occurring. The plan shall include the date of expected achievement of water quality objectives, measurable goals, the corrective actions necessary, and the associated costs, benefits, and environmental impact of addressing impairment and the expeditious development and implementation of total maximum daily loads when appropriate and as required pursuant to subsection C.

B. The plan required by subsection A shall include, but not be limited to, the promulgation of water quality standards for those substances: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act; or (iii) identified by the Board as having a particularly adverse effect on state water quality or living resources. The standards shall be promulgated pursuant to a schedule established by the Board following public notice and comment. Standards shall be adopted according to applicable federal criteria or standards unless the Board determines that an additional or more stringent standard is necessary to protect public health, aquatic life or drinking water supplies.

C. The plan required by subsection A shall, upon identification by the Board of impaired waters, establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Board shall develop and implement pursuant to a schedule total maximum daily loads of pollutants that may enter the water for each impaired water body as required by the Clean Water Act.

D. The plan required by subsection A shall, upon identification by the Board of toxic-impaired waters, include provisions as required by § 62.1-44.19:8.

§ 62.1-44.19:8. Control of discharges to toxic-impaired water.

Owners of establishments that discharge toxics to toxic-impaired waters shall evaluate the options described in §§ 10.1-1425.10 and 10.1-1425.11 in determining the appropriate means to control such discharges. Prior to issuing or reissuing any permit for the discharge of toxics to toxic-impaired waters, the Board shall review and consider the owner's evaluation of the options in determining the conditions and limitations of the permit.