

069003702

SENATE BILL NO. 106

Offered January 11, 2006

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A *BILL to amend and reenact §§ 62.1-44.3, 62.1-44.15, 62.1-44.15:3, 62.1-44.15:4 and 62.1-44.16 of the Code of Virginia, relating to local consent to waste discharge permits.*

Patron—Blevins

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.3, 62.1-44.15, 62.1-44.15:3, 62.1-44.15:4 and 62.1-44.16 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.3. Definitions.

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

"Board" means the State Water Control Board.

"Member" means a member of the Board.

"Certificate" means any certificate issued by the Board.

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

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

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

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

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources *including, without limitation, stormwater run-off from a solid waste landfill and discharge from the dewatering of a mining operation or any other type of excavation for sand, soil, rock, gravel, minerals, and like materials.*

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

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

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

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

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

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

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

66 "Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to
67 § 62.1-44.15 (7).

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

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

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

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

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

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

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

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

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

83 "Normal agricultural activities" means those activities defined as an agricultural operation in
84 § 3.1-22.29, and any activity that is conducted as part of or in furtherance of such agricultural operation,
85 but shall not include any activity for which a permit would have been required as of January 1, 1997,
86 under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

87 "Normal silvicultural activities" means any silvicultural activity, as defined in § 10.1-1181.1, and any
88 activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include
89 any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C.
90 § 1344 or any regulations promulgated pursuant thereto.

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

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

101 § 62.1-44.15. Powers and duties; civil penalties.

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

103 (1) [Repealed.]

104 (2) To study and investigate all problems concerned with the quality of state waters and to make
105 reports and recommendations.

106 (2a) To study and investigate methods, procedures, devices, appliances, and technologies that could
107 assist in water conservation or water consumption reduction.

108 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or
109 without the Commonwealth.

110 (2c) To make reports concerning, and formulate recommendations based upon, any such water
111 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth
112 are met.

113 (3a) To establish such standards of quality and policies for any state waters consistent with the
114 general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies
115 established and to take all appropriate steps to prevent quality alteration contrary to the public interest or
116 to standards or policies thus established, except that a description of provisions of any proposed standard
117 or policy adopted by regulation which are more restrictive than applicable federal requirements, together
118 with the reason why the more restrictive provisions are needed, shall be provided to the standing
119 committee of each house of the General Assembly to which matters relating to the content of the
120 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 § 2.2-4007 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling 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 (§ 2.2-4000 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 that 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, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters, *provided the local governing body of the locality in which the wastes are to be discharged consents to the issuance, amendment, or renewal of the certificate*; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. As of December 31, 2004, any Department personnel conducting inspections for compliance with stormwater management permits shall hold a certificate of competence pursuant to § 10.1-561. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued at least once every five years, except that the Department shall inspect all facilities covered by the Virginia Pollution Abatement permit for confined animal feeding operations annually. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification beyond the maximum duration and the certificate shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

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

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

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

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

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

185 (5c) Any certificate issued by the Board under this chapter relating to dredging projects governed
186 under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be
187 conditioned upon a demonstration of financial responsibility for the completion of compensatory
188 mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate
189 of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of
190 Engineers requires demonstration of financial responsibility for the completion of compensatory
191 mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army
192 Corps of Engineers shall be used to meet this requirement.

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

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

206 (8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by
207 § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct
208 facilities in accordance with final approved plans and specifications to construct such facilities in
209 accordance with final approved plans and specifications, (iii) who have violated the terms and provisions
210 of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to
211 comply with a directive from the Board to comply with such directive, (v) who have contravened duly
212 adopted and promulgated water quality standards and policies to cease and desist from such
213 contravention and to comply with such water quality standards and policies, (vi) who have violated the
214 terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned
215 treatment works to comply with such terms and provisions or (vii) who have contravened any applicable
216 pretreatment standard or requirement to comply with such standard or requirement; and also to issue
217 such orders to require any owner to comply with the provisions of this chapter and any decision of the
218 Board. Orders issued pursuant to this subsection may include civil penalties of up to \$32,500 per
219 violation, not to exceed \$100,000 per order. The Board may assess penalties under this subsection if (a)
220 the person has been issued at least two written notices of alleged violation by the Department for the
221 same or substantially related violations at the same site, (b) such violations have not been resolved by
222 demonstration that there was no violation, by an order issued by the Board or the Director, or by other
223 means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and
224 (d) there is a finding that such violations have occurred after a hearing conducted in accordance with
225 subdivision (8b). The actual amount of any penalty assessed shall be based upon the severity of the
226 violations, the extent of any potential or actual environmental harm, the compliance history of the
227 facility or person, any economic benefit realized from the noncompliance, and the ability of the person
228 to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty
229 prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this
230 subsection. The issuance of a notice of alleged violation by the Department shall not be considered a
231 case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of
232 each violation, the specific provision of law violated, and information on the process for obtaining a
233 final decision or fact finding from the Department on whether or not a violation has occurred, and
234 nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties
235 shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental
236 Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of
237 Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) of this chapter shall be paid into
238 the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11.

239 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by
240 the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the
241 Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and
242 they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided that
243 if the Board finds that any such owner is grossly affecting or presents an imminent and substantial

danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or 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 48 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 § 62.1-44.32 (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), 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 this title, 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.

(8e) The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

(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

305 a defense in bar to any such action.

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

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

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

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

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

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

331 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are
332 protective of state waters and public health as an alternative to directly discharging pollutants into waters
333 of the state. The requirements shall address various potential categories of reuse and may include
334 general permits and provide for greater flexibility and less stringent requirements commensurate with the
335 quality of the reclaimed water and its intended use. The requirements shall be developed in consultation
336 with the Department of Health and other appropriate state agencies. This authority shall not be construed
337 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

338 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's
339 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland
340 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net
341 resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and
342 guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

343 § 62.1-44.15:3. When application for permit considered complete.

344 A. No application submitted to the Board for a new, *modified, or renewed* individual Virginia
345 Pollutant Discharge Elimination permit authorizing a new, *altered, or continued* discharge of sewage,
346 industrial wastes, or other wastes shall be considered complete unless it contains notification from the
347 county, city, or town in which the discharge is to take place that the location and operation of the
348 discharging facility are consistent with applicable ordinances *adopted to protect water quality including,*
349 *without limitation, watershed protection ordinances and those ordinances* adopted pursuant to Chapter
350 22 (§ 15.2-2200 et seq.) of Title 15.2. The county, city, or town shall inform in writing the applicant
351 and the Board of the discharging facility's compliance or noncompliance not more than thirty days from
352 receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the
353 county, city, or town fail to provide such written notification within thirty days, the requirement for such
354 notification is waived, *except that in no event shall a general Virginia Pollutant Discharge Elimination*
355 *permit be granted, amended, or continued, or an application for a new, modified, or renewed individual*
356 *Virginia Pollutant Discharge Elimination permit approved, to authorize the discharge of industrial*
357 *wastes without the express concurrence of the local governing body for the locality in which the*
358 *discharge is to take place.* The provisions of this subsection shall not apply to any discharge for which
359 a valid certificate had been issued prior to March 10, 2000, *unless an application is made to continue,*
360 *modify, amend, or renew such certificate.*

361 B. No application for a certificate to discharge sewage into or adjacent to state waters from a
362 privately owned wastewater treatment system serving fifty or more residences shall be considered
363 complete unless the applicant has provided the Executive Director with notification from the State
364 Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance
365 with all regulations and relevant orders of the State Corporation Commission.

366 § 62.1-44.15:4. Notification of local governments and property owners.

A. Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the Executive Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Executive Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this subsection.

B. Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the Board's antidegradation policy, as required by 40 C.F.R. § 131.12, the Board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board. After receipt of the notice of the nomination localities shall be provided sixty days to comment on the consistency of the nomination with the locality's comprehensive plan.

C. Upon determining that a waterway or any segment of a waterway does not meet its water quality standard use designation as set out in the Board's regulations and as required by § 1313 (d) of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) and 40 C.F.R. § 130.7 (b), the Board shall notify each locality in which the waterway or segment lies. The written notification shall include, at a minimum: (i) a description of the reasons the waters do not meet the water quality standard including specific parameters and criteria not met; (ii) a layman's description of the location of the waters; (iii) the known sources of the pollution; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the failure of the waterway or segment to meet the standards. After receipt of the notification, local governments shall have thirty days to comment.

D. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the Board shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum: (i) the name of the applicant; (ii) the nature of the application and proposed discharge; (iii) the availability and timing of any comment period; and (iv) upon request, any other information known to, or in the possession of, the Board or the Department regarding the applicant not required to be held confidential by this chapter. *In no event shall the Board approve a new, modified, or renewed individual permit for the discharge of industrial wastes without the express concurrence of the local governing body for the locality in which the discharge is to be located. In addition, any general permit for the discharge of industrial wastes including, without limitation, the discharge of stormwater from industrial uses, shall be deemed revised and amended to require concurrence of the local governing body for the locality in which the discharge is to be located.* The Board shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one quarter mile downstream and one quarter mile upstream or to the fall line whichever is closer on tidal waters, and (ii) each locality and riparian property owner to a distance one half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river, at the point or proposed point of discharge, is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board.

E. Upon the commencement of public notice of an enforcement action pursuant to this chapter, the Board shall notify, in writing, the locality where the alleged offense has or is taking place of: (i) the name of the alleged violator; (ii) the facts of the alleged violation; (iii) the statutory remedies for the alleged violation; (iv) the availability and timing of any comment period; and (v) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the alleged violation.

F. The comment periods established in subsections B and C shall in no way impact a locality's ability to comment during any additional comment periods established by the Board.

§ 62.1-44.16. Industrial wastes.

(1) Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes.

Application for such discharge shall be made to the Board and shall be accompanied by evidence of local certification and local governing body consent, by pertinent plans, specifications, maps, and such

428 other relevant information as may be required, in scope and details satisfactory to the Board.

429 (a) Public notice of every such application shall be given by notice published once a week for two
430 successive weeks in a newspaper of general circulation in the county or city where the certificate is
431 applied for or by such other means as the Board may prescribe.

432 (b) The Board shall review the application and the information that accompanies it as soon as
433 practicable and making a ruling within a period of four months from the date the application is filed
434 with the Board approving or disapproving the application and stating the grounds for conditional
435 approval or disapproval. If the application is approved, the Board shall grant a certificate for the
436 discharge of the industrial wastes or other wastes into state waters or for the other alteration of the
437 physical, chemical or biological properties of state waters, as the case may be. If the application is
438 disapproved, the Board shall notify the owner as to what measures, if any, the owner may take to secure
439 approval. *No application shall be approved, amended, or renewed without (i) local certification of*
440 *compliance with local ordinances designed to protect water quality or watersheds and local ordinances*
441 *adopted pursuant to Chapter 22 of Title 15.2 and (ii) express consent by the local governing body of the*
442 *locality in which the discharge is to take place. Any general permit for the discharge of industrial*
443 *wastes including, without limitation, the discharge of stormwater run-off from industrial activities, shall*
444 *be deemed revised and amended to require the consent of the local governing body of the locality in*
445 *which the discharge is located.*

446 (2) (a) Any owner operating under a valid certificate issued by the Board who fails to meet water
447 quality standards established by the Board solely as a result of a change in water quality standards or in
448 the law shall provide the necessary facilities approved by the Board within a reasonable time to meet
449 such new requirements; provided, however, that such facilities shall be reasonable and practicable of
450 attainment giving consideration to the public interest and the equities of the case. The Board may amend
451 such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at
452 least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or
453 amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and
454 notice may be dispensed with, *provided that local certification and local consent is given, pursuant to*
455 *this section, for the new or amended certificate.*

456 (b) The Board shall revoke the certificate in case of a failure to comply with all such requirements
457 and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15 (8).