

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 10.1-1408.5, 62.1-44.3, and 62.1-44.29 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 an article numbered 2.2, consisting of sections numbered 62.1-44.15:20 through 62.1-44.15:23, and to repeal § 62.1-44.15:5 of the Code of Virginia, relating to water protection.*

[H 2539]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-1408.5, 62.1-44.3, and 62.1-44.29 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3.1 of Title 62.1 an article numbered 2.2, consisting of sections numbered 62.1-44.15:20 through 62.1-44.15:23, as follows:**

§ 10.1-1408.5. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this subsection shall not apply to subsection B or the (i) expansion of an existing municipal solid waste landfill located in a city with a population between 41,000 and 52,500 when the owner or operator of the landfill is an authority created pursuant to § 15.2-5102 that has applied for a permit under § 404 of the federal Clean Water Act prior to January 1, 1989, and the owner or operator has received a permit under § 404 of the federal Clean Water Act and ~~§ 62.1-44.15:5 of this Code~~ *the Virginia Water Resources and Wetlands Protection Program, Article 2.2 (§ 62.1-44.15:20 et seq.) of Chapter 3.1 of Title 62.1*, or (ii) construction of a new municipal solid waste landfill in any county with a population between 29,200 and 30,000, according to the 1990 United States Census, and provided that the municipal solid waste landfills covered under clauses (i) and (ii) have complied with all other applicable federal and state environmental laws and regulations. It is expressly understood that while the provisions of this section provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the project should receive the necessary environmental and regulatory permits to proceed. For the purposes of this section, the term "expansion of a municipal solid waste landfill" shall include the siting and construction of new cells or the expansion of existing cells at the same location.

B. The Director may issue a solid waste permit for the expansion of a municipal solid waste landfill located in a wetland only if the following conditions are met: (i) the proposed landfill site is at least 100 feet from any surface water body and at least one mile from any tidal wetland; (ii) the Director determines, based upon the existing condition of the wetland system, including, but not limited to, sedimentation, toxicity, acidification, nitrification, vegetation, and proximity to existing permitted waste disposal areas, roads or other structures, that the construction or restoration of a wetland system in another location in accordance with a Virginia Water Protection Permit approved by the State Water Control Board would provide higher quality wetlands; and (iii) the permit requires a minimum two-to-one wetlands mitigation ratio. This subsection shall not apply to the exemptions provided in clauses (i) and (ii) of subsection A.

C. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is within a mile of such a wetland, unless the Director determines that less frequent monitoring is necessary. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the Director. All results shall be reported to the Department.

D. This section shall not apply to landfills which impact less than two acres of nontidal wetlands.

E. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

F. There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to wetlands, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.

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§ 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:

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

"Board" means the State Water Control Board.

"Certificate" means any certificate issued by the Board.

"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.

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

"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.

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

"Member" means a member of the Board.

~~"Certificate" means any certificate issued by the Board.~~

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

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

"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.

"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.

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

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

"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.

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

requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

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

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

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

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

"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.

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

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

"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.

"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.

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

"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.

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur.

Specifically excluded from this definition is "gray water."

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

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

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

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

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

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

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

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

"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.

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

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

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

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

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

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

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

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

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

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

#### Article 2.2.

#### Virginia Water Resources and Wetlands Protection Program.

§ 62.1-44.15:20. Virginia water protection permit.

A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:

1. Excavate in a wetland;

2. On or after October 1, 2001, conduct the following 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; or

3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board;

B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water

Protection Permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

C. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with and give full consideration to the written recommendations of the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services, and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within 45 days after notification by the Board. If written comments are not submitted by an agency within this time period, the Board shall assume that the agency has no comments on the proposed permit.

D. Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

E. No locality may impose wetlands permit requirements duplicating state or federal wetlands permit requirements.

F. The Board shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts to wetlands.

§ 62.1-44.15:21. Impacts to wetlands.

A. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and may be met through wetland creation or restoration, purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, or contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (i) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (ii) preservation of wetlands.

C. The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this article for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

D. The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board is authorized to waive the requirement for a general permit or deem an activity in compliance with a general permit when it determines that an isolated wetland is of minimal ecological value. The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;
2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission. No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1, and 56-580 to ensure that consultation on wetland impacts occurs prior to siting determinations;

3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining;

4. Virginia Department of Transportation or other linear transportation projects; and

5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board any copies of preconstruction notification, postconstruction report, and certificate of compliance required by the U.S. Army Corps of Engineers.

E. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information

301 from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the  
 302 permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or  
 303 hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to  
 304 conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of  
 305 completion of the public meeting or hearing.

306 F. Within 15 days of receipt of a general permit application, the Board shall review the application  
 307 for completeness and either accept the application or request additional specific information from the  
 308 applicant. A determination that an application is complete shall not mean the Board will issue the  
 309 permit but means only that the applicant has submitted sufficient information to process the application.  
 310 The Board shall deny, approve, or approve with conditions any application for coverage under a  
 311 general permit within 45 days of receipt of a complete preconstruction application. The application shall  
 312 be deemed approved if the Board fails to act within 45 days.

313 G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by  
 314 activities governed under Chapter 13 (§ 28.2-100 et seq.) of Title 28.2 or normal agricultural activities  
 315 or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn  
 316 and landscape maintenance, or other similar activities that are incidental to an occupant's ongoing  
 317 residential use of property and of minimal ecological impact. The Board shall develop criteria  
 318 governing this exemption and shall specifically identify the activities meeting these criteria in its  
 319 regulations.

320 § 62.1-44.15:22. Water withdrawals and preservation of instream flow.

321 A. Conditions contained in a Virginia Water Protection Permit may include but are not limited to the  
 322 volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to  
 323 protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest  
 324 priority uses.

325 B. Notwithstanding any other provision, no Virginia Water Protection Permit shall be required for  
 326 any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401  
 327 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be  
 328 required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the  
 329 withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any  
 330 necessary withdrawal structures to make such withdrawal; however, a permit shall be required before  
 331 any such withdrawal is increased beyond the amount authorized by the certification.

332 C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased  
 333 withdrawal when it finds that because of drought there is an insufficient public drinking water supply  
 334 that may result in a substantial threat to human health or public safety. Such a permit may be issued to  
 335 authorize the proposed activity only after conservation measures mandated by local or state authorities  
 336 have failed to protect public health and safety and notification of the agencies designated in  
 337 § 62.1-44.15:20 C and only for the amount of water necessary to protect public health and safety. These  
 338 agencies shall have five days to provide comments or written recommendations on the issuance of the  
 339 permit. Notwithstanding the provisions of § 62.1-44.15:20 B, no public comment shall be required prior  
 340 to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit,  
 341 the permit holder shall apply for a Virginia Water Protection Permit authorized under the other  
 342 provisions of this section. The application for the Virginia Water Protection Permit shall be subject to  
 343 public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit  
 344 issued under this section shall be valid until the Board approves or denies the subsequent request for a  
 345 Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the  
 346 emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection  
 347 Permit.

348 § 62.1-44.15:23. Wetland and stream mitigation banks.

349 A. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for  
 350 adverse impacts to wetlands or streams, the applicant may be permitted to satisfy all or part of such  
 351 mitigation requirements by the purchase or use of credits from any wetland or stream mitigation bank in  
 352 the Commonwealth, or in Maryland on property wholly surrounded by and located in the Potomac River  
 353 if the mitigation banking instrument provides that the Board shall have the right to enter and inspect the  
 354 property and that the mitigation bank instrument and the contract for the purchase or use of such  
 355 credits may be enforced in the courts of the Commonwealth, including any banks owned by the permit  
 356 applicant, that has been approved and is operating in accordance with applicable federal and state  
 357 guidance, laws, or regulations for the establishment, use, and operation of mitigation banks as long as:  
 358 (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the  
 359 United States (U.S.G.S. 1980), as the impacted site or in an adjacent cataloging unit within the same  
 360 river watershed or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or  
 361 (vi) of this section; (2) the bank is ecologically preferable to practicable onsite and offsite individual

mitigation options as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site.

B. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of mitigation banks. The Commonwealth, its officials, agencies, and employees shall not be liable for any action taken under any agreement developed pursuant to such authority.

C. State agencies are authorized to purchase credits from mitigation banks.

§ 62.1-44.29. Judicial review.

Any owner aggrieved by or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under § 62.1-44.15 (5), 62.1-44.15 (8a), (8b), and (8c), ~~62.1-44.15:5~~ 62.1-44.15:20, 62.1-44.15:21, 62.1-44.15:22, 62.1-44.15:23, 62.1-44.16, 62.1-44.17, 62.1-44.19, or 62.1-44.25, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

**2. That permits and regulations issued under the authority of § 62.1-44.15:5 of the Code of Virginia shall remain in effect until their specified expiration dates or until they are otherwise amended, modified, repealed, or revoked.**

**3. That § 62.1-44.15:5 of the Code of Virginia is repealed.**