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HOUSE BILL NO. 3113

Offered January 18, 2007

A BILL to amend and reenact §§ 2.2-3705.7, 2.2-4006, 2.2-4007, 2.2-4013, 2.2-4014, 2.2-4015, 2.2-4021, 3.1-949.4, 8.01-225, 10.1-1182, 10.1-1185, 10.1-1186, 10.1-1186.2, 10.1-1186.2:1, 10.1-1186.3, 10.1-1186.4, 10.1-1187.1, 10.1-1187.3, 10.1-1187.6, 10.1-1197.3, 10.1-1232, 10.1-1234, 10.1-1236, 10.1-1300, 10.1-1307, 10.1-1307.01, 10.1-1307.3, 10.1-1308, 10.1-1309, 10.1-1309.1, 10.1-1310, 10.1-1310.1, 10.1-1311, 10.1-1312, 10.1-1314, 10.1-1314.1, 10.1-1315, 10.1-1316, 10.1-1316.1, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1321, 10.1-1322.2, 10.1-1322.4, 10.1-1323, 10.1-1328, 10.1-1400, 10.1-1402, 10.1-1402.01, 10.1-1402.1, 10.1-1402.2, 10.1-1405, 10.1-1408.5, 10.1-1425.23, 10.1-1427, 10.1-1431, 10.1-1432, 10.1-1433, 10.1-1434, 10.1-1435, 10.1-1436, 10.1-1437, 10.1-1438, 10.1-1439, 10.1-1440, 10.1-1441, 10.1-1442, 10.1-1443, 10.1-1444, 10.1-1445, 10.1-1446, 10.1-1447, 10.1-1448, 10.1-1450, 10.1-1454.1, 10.1-1455, 10.1-1456, 10.1-1457, 10.1-1504, 10.1-2117, 10.1-2129, 10.1-2131, 10.1-2500, 15.2-924, 15.2-2111, 15.2-5101, 21-122.1, 28.2-638, 28.2-1100, 28.2-1205, 28.2-1205.1, 28.2-1302, 28.2-1403, 29.1-214, 32.1-163, 32.1-164, 32.1-164.3, 32.1-164.5, 32.1-176.7, 32.1-233, 36-99.6, 44-146.30, 45.1-179.2, 45.1-179.7, 45.1-179.8, 45.1-179.9, 45.1-254, 45.1-361.27, 46.2-1176, 46.2-1178.1, 46.2-1179.1, 46.2-1187.2, 46.2-1304.1, 54.1-505, 54.1-2300, 54.1-2301, 55-182.2, 56-586.1, 58.1-2289, 58.1-3660, 58.1-3664, 62.1-44.3, 62.1-44.4, 62.1-44.5, 62.1-44.13, 62.1-44.15, 62.1-44.15:01, 62.1-44.15:1, 62.1-44.15:1.1, 62.1-44.15:2, 62.1-44.15:3, 62.1-44.15:4, 62.1-44.15:5, 62.1-44.15:5.01, 62.1-44.15:5.1, 62.1-44.15:5.2, 62.1-44.15:6, 62.1-44.15:7, 62.1-44.16, 62.1-44.17, 62.1-44.17:1, 62.1-44.17:1.1, 62.1-44.17:3, 62.1-44.17:4, 62.1-44.18, 62.1-44.18:2, 62.1-44.18:3, 62.1-44.19, 62.1-44.19:1, 62.1-44.19:2, 62.1-44.19:3, 62.1-44.19:5, 62.1-44.19:6, 62.1-44.19:7, 62.1-44.19:8, 62.1-44.19:14, 62.1-44.19:15, 62.1-44.19:16, 62.1-44.19:18, 62.1-44.20, 62.1-44.21, 62.1-44.23, 62.1-44.25, 62.1-44.26, 62.1-44.27, 62.1-44.28, 62.1-44.29, 62.1-44.31, 62.1-44.32, 62.1-44.33, 62.1-44.34:8, 62.1-44.34:9, 62.1-44.34:10, 62.1-44.34:11, 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:16 62.1-44.34:18, 62.1-44.34:19, 62.1-44.34:19.1, 62.1-44.34:19.2, 62.1-44.34:20, 62.1-44.34:21, 62.1-44.34:22, 62.1-44.34:23, 62.1-44.34:25, 62.1-44.36, 62.1-44.37, 62.1-44.38, 62.1-44.39, 62.1-44.40, 62.1-44.41, 62.1-44.42, 62.1-44.43, 62.1-44.115, 62.1-44.116, 62.1-67, 62.1-69.25, 62.1-69.36, 62.1-69.45, 62.1-73, 62.1-85, 62.1-104, 62.1-105, 62.1-106, 62.1-107, 62.1-109, 62.1-111, 62.1-224, 62.1-225, 62.1-227, 62.1-229, 62.1-229.1, 62.1-229.2, 62.1-229.3, 62.1-230, 62.1-230.1, 62.1-241.1, 62.1-241.2, 62.1-241.4, 62.1-241.6, 62.1-241.7, 62.1-241.8, 62.1-241.12, 62.1-242, 62.1-243, 62.1-244, 62.1-245, 62.1-247, 62.1-248, 62.1-249, 62.1-250, 62.1-251, 62.1-252, 62.1-255, 62.1-256, 62.1-259, 62.1-260, 62.1-261, 62.1-262, 62.1-263, 62.1-264, 62.1-265, 62.1-266, 62.1-267, 62.1-268, 62.1-269, 62.1-270, and 67-401 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 11.1 of Title 10.1 an article numbered 1.01, consisting of sections numbered 10.1-1187.01 and 10.1-1187.02, and by adding in Article 9 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.34:9.1; and to repeal §§ 10.1-1184, 10.1-1186.3, and 10.1-1313 of the Code of Virginia, relating to the Department of Environmental Quality.

Patron—Landes

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.7, 2.2-4006, 2.2-4007, 2.2-4013, 2.2-4014, 2.2-4015, 2.2-4021, 3.1-949.4, 8.01-225, 10.1-1182, 10.1-1185, 10.1-1186, 10.1-1186.2, 10.1-1186.2:1, 10.1-1186.3, 10.1-1186.4, 10.1-1187.1, 10.1-1187.3, 10.1-1187.6, 10.1-1197.3, 10.1-1232, 10.1-1234, 10.1-1236, 10.1-1300, 10.1-1307, 10.1-1307.01, 10.1-1307.3, 10.1-1308, 10.1-1309, 10.1-1309.1, 10.1-1310, 10.1-1310.1, 10.1-1311, 10.1-1312, 10.1-1314, 10.1-1314.1, 10.1-1315, 10.1-1316, 10.1-1316.1, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1321, 10.1-1322.2, 10.1-1322.4, 10.1-1323, 10.1-1328, 10.1-1400, 10.1-1402, 10.1-1402.01, 10.1-1402.1, 10.1-1402.2, 10.1-1405, 10.1-1408.5, 10.1-1425.23, 10.1-1427, 10.1-1431, 10.1-1432, 10.1-1433, 10.1-1434, 10.1-1435, 10.1-1436, 10.1-1437, 10.1-1438, 10.1-1439, 10.1-1440, 10.1-1441, 10.1-1442, 10.1-1443, 10.1-1444, 10.1-1445, 10.1-1446, 10.1-1447, 10.1-1448, 10.1-1450, 10.1-1454.1, 10.1-1455, 10.1-1456, 10.1-1457, 10.1-1504, 10.1-2117, 10.1-2129, 10.1-2131, 10.1-2500, 15.2-924, 15.2-2111, 15.2-5101, 21-122.1, 28.2-638, 28.2-1100, 28.2-1205, 28.2-1205.1, 28.2-1302, 28.2-1403, 29.1-214, 32.1-163, 32.1-164, 32.1-164.3, 32.1-164.5, 32.1-176.7, 32.1-233, 36-99.6, 44-146.30, 45.1-179.2, 45.1-179.7, 45.1-179.8, 45.1-179.9, 45.1-254, 45.1-361.27, 46.2-1176, 46.2-1178.1, 46.2-1179.1, 46.2-1187.2, 46.2-1304.1, 54.1-505, 54.1-2300, 54.1-2301, 55-182.2, 56-586.1, 58.1-2289, 58.1-3660, 58.1-3664, 62.1-44.3, 62.1-44.4, 62.1-44.5, 62.1-44.13, 62.1-44.15, 62.1-44.15:01,

62.1-44.15:1, 62.1-44.15:1.1, 62.1-44.15:2, 62.1-44.15:3, 62.1-44.15:4, 62.1-44.15:5, 62.1-44.15:5.01, 62.1-44.15:5.1, 62.1-44.15:5.2, 62.1-44.15:6, 62.1-44.15:7, 62.1-44.16, 62.1-44.17, 62.1-44.17:1, 62.1-44.17:1.1, 62.1-44.17:3, 62.1-44.17:4, 62.1-44.18, 62.1-44.18:2, 62.1-44.18:3, 62.1-44.19, 62.1-44.19:1, 62.1-44.19:2, 62.1-44.19:3, 62.1-44.19:5, 62.1-44.19:6, 62.1-44.19:7, 62.1-44.19:8, 62.1-44.19:14, 62.1-44.19:15, 62.1-44.19:16, 62.1-44.19:18, 62.1-44.20, 62.1-44.21, 62.1-44.23, 62.1-44.25, 62.1-44.26, 62.1-44.27, 62.1-44.28, 62.1-44.29, 62.1-44.31, 62.1-44.32, 62.1-44.33, 62.1-44.34:8, 62.1-44.34:9, 62.1-44.34:10, 62.1-44.34:11, 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:16 62.1-44.34:18, 62.1-44.34:19, 62.1-44.34:19.1, 62.1-44.34:19.2, 62.1-44.34:20, 62.1-44.34:21, 62.1-44.34:22, 62.1-44.34:23, 62.1-44.34:25, 62.1-44.36, 62.1-44.37, 62.1-44.38, 62.1-44.39, 62.1-44.40, 62.1-44.41, 62.1-44.42, 62.1-44.43, 62.1-44.115, 62.1-44.116, 62.1-67, 62.1-69.25, 62.1-69.36, 62.1-69.45, 62.1-73, 62.1-85, 62.1-104, 62.1-105, 62.1-106, 62.1-107, 62.1-109, 62.1-111, 62.1-224, 62.1-225, 62.1-227, 62.1-229, 62.1-229.1, 62.1-229.2, 62.1-229.3, 62.1-230, 62.1-230.1, 62.1-241.1, 62.1-241.2, 62.1-241.4, 62.1-241.6, 62.1-241.7, 62.1-241.8, 62.1-241.12, 62.1-242, 62.1-243, 62.1-244, 62.1-245, 62.1-247, 62.1-248, 62.1-249, 62.1-250, 62.1-251, 62.1-252, 62.1-255, 62.1-256, 62.1-259, 62.1-260, 62.1-261, 62.1-262, 62.1-263, 62.1-264, 62.1-265, 62.1-266, 62.1-267, 62.1-268, 62.1-269, 62.1-270, and 67-401 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11.1 of Title 10.1 a article numbered 1.01, consisting of sections numbered 10.1-1187.01 and 10.1-1187.02, and by adding in Article 9 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.34:9.1 as follows:

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

3. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied

affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

10. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality~~,~~ ~~the~~ ~~State~~ ~~Water~~ ~~Control~~ ~~Board,~~ ~~State~~ ~~Air~~ ~~Pollution~~ ~~Control~~ ~~Board~~ ~~or~~ ~~the~~ ~~Virginia~~ ~~Waste~~ ~~Management~~ ~~Board~~ relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any

environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments to the extent such records contain information identifying a person under the age of 18 years, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

6. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board

meetings and one public hearing.

7. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

8. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

9. General permits issued by the (a) ~~State Air Pollution Control Board~~*Director of the Department of Environmental Quality* pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 ~~or (b) State Water Control Board pursuant to~~, the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, ~~(c)~~*(b)* Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1, and ~~(d)~~*(c)* the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective *Director,* Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 2.2-4007, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 2.2-4007, and (iv) conducts at least one public hearing on the proposed general permit.

10. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

11. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

12. Regulations of the Marine Resources Commission.

13. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 2.2-4007, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in subsection F of § 2.2-4007, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of subsection K of § 2.2-4007 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

14. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy pursuant to subsection B of § 54.1-3307.

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002, or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

§ 2.2-4007. Notice of intended regulatory action; public participation; informational proceedings; effect of noncompliance.

A. Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. The petition shall state (i) the substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections, and (ii) reference to the legal authority of the agency to take the action requested. Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request and the agency's plan for disposition of the petition to the Registrar for publication in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031. A 21-day period for acceptance of written public comment on the petition shall be provided after publication in the Virginia Register. The agency shall issue a written decision to grant or deny the petitioner's request within 90 days following the close of the comment period. However, if the rulemaking authority is vested in an entity that has not met within that 90-day period, the entity shall issue a written decision no later than 14 days after it next meets. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations.

Agency decisions to initiate or not initiate rulemaking in response to petitions shall not be subject to judicial review.

B. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, 2.2-4011, or 2.2-4012.1, an agency shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action that describes the subject matter and intent of the planned regulation. At least 30 days shall be provided for public comment after publication of the Notice of Intended Regulatory Action. An agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.

C. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings if required by basic law. If the agency states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action (i) the Governor directs the agency to hold a public hearing or (ii) the agency receives requests for a public hearing from at least 25 persons.

D. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

E. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency or its specially designated subordinate. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

F. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, or 2.2-4011, the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be published in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031. In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. The Register and any newspaper publication shall be made at least 60 days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts, summaries or notations of oral presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

G. If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section.

H. Before delivering any proposed regulation under consideration to the Registrar as required in subsection I, the agency shall deliver a copy of that regulation to the Department of Planning and Budget. In addition to determining the public benefit, the Department of Planning and Budget in coordination with the agency, shall, within 45 days, prepare an economic impact analysis of the proposed regulation, as follows:

1. The economic impact analysis shall include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property; and the projected costs to affected businesses, localities or entities to implement or comply with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation; and

2. If the regulation may have an adverse effect on small businesses, the economic impact analysis shall also include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. As used in this subdivision, "small business" has the same meaning as provided in subsection A of § 2.2-4007.1.

Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in subsection I, and a copy to the Registrar for publication with the proposed regulation. No regulation shall be promulgated for consideration pursuant to subsection I until the impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 5 (§ 2.2-4025 et seq.) of this chapter or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

I. Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to subsection H. Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary; the statement of the basis, purpose, substance, and issues; the economic impact analysis; and the agency's response shall be published in the Virginia Register of Regulations, together with the notice of opportunity for oral or written submittals on the proposed regulation.

J. When an agency formulating regulations in public assistance and social services programs cannot comply with the public comment requirements of subsection F due to time limitations imposed by state or federal laws or regulations for the adoption of such regulation, the Secretary of Health and Human Resources may shorten the time requirements of subsection F. If, in the Secretary's sole discretion, such time limitations reasonably preclude any advance published notice, he may waive the requirements of subsection F. However, the agency shall, as soon as practicable after the adoption of the regulation in a manner consistent with the requirements of subsection F, publish notice of the promulgation of the regulation and afford an opportunity for public comment. The precise factual basis for the Secretary's determination shall be stated in the published notice.

K. If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least 25 persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for 30 days to solicit additional public comment and (ii) file notice of the additional 30-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

L. In no event shall the failure to comply with the requirements of subsection F be deemed mere harmless error for the purposes of § 2.2-4027.

M. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~*Director of the Department of Environmental Quality* of variances to ~~its~~ regulations *adopted by the Virginia Board of Environmental Quality pursuant to Chapter 13 of Title 10.1 (§ 10.1-1300 et seq.).*

§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The

procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the agency no later than fifteen days following the completion of the public comment period provided for in § 2.2-4007. The Governor may recommend amendments or modifications to any regulation that would bring that regulation into conformity with statutory authority or state or federal laws, regulations or judicial decisions.

Not less than fifteen days following the completion of the public comment period provided for in § 2.2-4007, the agency may (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's recommendations for change.

B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be explained in the final regulation.

C. If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may require the agency to provide an additional thirty days to solicit additional public comment on the changes by transmitting notice of the additional public comment period to the agency and to the Registrar within the thirty-day adoption period described in subsection D, and publishing the notice in the Register. The additional public comment period required by the Governor shall begin upon publication of the notice in the Register.

D. A thirty-day final adoption period for regulations shall commence upon the publication of the final regulation in the Register. The Governor may review the final regulation during this thirty-day final adoption period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014, or both.

If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar and agency prior to the conclusion of the thirty-day final adoption period. The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he fails to suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014 during the thirty-day final adoption period. The Governor's objection, or the suspension of the regulation, or both if applicable, shall be published in the Register.

A regulation shall become effective as provided in § 2.2-4015.

E. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~*Director of the Department of Environmental Quality* of variances to ~~its~~ regulations *adopted by the Virginia Board of Environmental Quality pursuant to Chapter 13 of Title 10.1 (§ 10.1-1300 et seq.)*.

§ 2.2-4014. Legislative review of proposed and final regulations.

A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable or the Joint Commission on Administrative Rules may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the objecting legislative committee or the Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within the final adoption period, subdivision A 1 of § 2.2-4015 shall govern.

B. In addition or as an alternative to the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable or the Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or (ii) the Joint Commission on Administrative Rules may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the 30-day adoption period, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of § 2.2-4006, if it makes no changes to the regulation other than those required by

statutory law or (ii) shall follow the provisions of § 2.2-4007, if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.

C. A regulation shall become effective as provided in § 2.2-4015.

D. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~*Director of the Department of Environmental Quality* of variances to ~~its~~ regulations *adopted by the Virginia Board of Environmental Quality pursuant to Chapter 13 of Title 10.1 (§ 10.1-1300 et seq.)*.

§ 2.2-4015. Effective date of regulation; exception.

A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100 et seq.) shall become effective at the conclusion of the thirty-day final adoption period provided for in subsection D of § 2.2-4013, or any other later date specified by the agency, unless:

1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable twenty-one-day extension period provided in § 2.2-4014;

2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;

3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular legislative session; or

4. The agency has suspended the regulatory process in accordance with subsection K of § 2.2-4007, or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.

B. Whenever the regulatory process has been suspended for any reason, any action by the agency that either amends the regulation or does not amend the regulation but specifies a new effective date shall be considered a readoption of the regulation for the purposes of appeal. If the regulation is suspended under subsection K of § 2.2-4007, such readoption shall take place after the thirty-day public comment period required by that subsection. Suspension of the regulatory process by the agency may occur simultaneously with the filing of final regulations as provided in subsection B of § 2.2-4013.

When a regulation has been suspended, the agency must set the effective date no earlier than fifteen days from publication of the readoption action and any changes made to the regulation. During that fifteen-day period, if the agency receives requests from at least twenty-five persons for the opportunity to comment on new substantial changes, it shall again suspend the regulation pursuant to subsection K of § 2.2-4007.

C. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~*Director of the Department of Environmental Quality* of variances to ~~its~~ regulations *adopted by the Virginia Board of Environmental Quality pursuant to Chapter 13 of Title 10.1 (§ 10.1-1300)*.

§ 2.2-4021. Timetable for decision; exemptions.

A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a decision on a litigated issue, and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.

B. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 90 days from the date of the informal fact-finding, formal proceeding, or completion of a summary case decision proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) ~~the State Water Control Board or~~ the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act~~, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with~~ *or* the federal Clean Air Act, or ~~(iii)~~*(ii)* the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An

agency shall provide notification to the named party of its decision within five days of the decision.

C. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 30 days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within 30 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) ~~the State Water Control Board or~~ the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act~~,~~ ~~(ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with~~ *or* the federal Clean Air Act, or ~~(iii)~~*(ii)* the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notice to the named party of its decision within five days of the decision.

D. The provisions of subsection B notwithstanding, if the board members or agency personnel who conducted the informal fact-finding, formal proceeding, or summary case decision proceeding are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection B shall be reset and commence from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notice within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.

§ 3.1-949.4. Commissioner to receive enforcement authority for the Stage II Vapor Recovery Programs.

A. Upon the request of the Commissioner, the ~~State Air Pollution Control Board~~ *Director of the Department of Environmental Quality* may delegate to the Commissioner ~~its~~ *his* authority under Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, to implement and enforce any provisions of ~~its~~ regulations covering the storage and transfer of petroleum liquids. Upon receiving such delegation, the authority to implement and enforce the regulations under Chapter 13 of Title 10.1 shall be vested solely in the Commissioner, notwithstanding any provision of law contained in Title 10.1, except as provided herein. The ~~State Air Pollution Control Board~~*Director of the Department of Environmental Quality*, in delegating ~~its~~*his* authority under this section, may make the delegation subject to any conditions ~~it~~*he* deems appropriate to ensure effective implementation of the regulations ~~according to the policies of the State Air Pollution Control Board~~.

B. In addition to the Commissioner's authority to implement and enforce any provisions of the regulations ~~of the State Air Pollution Control Board~~ covering the storage and transfer of petroleum liquids, the Board of Agriculture and Consumer Services shall have the authority to promulgate such regulations as are reasonably necessary for the administration, monitoring and enforcement of the law relating to the storage and transfer of petroleum liquids. Any violation of the provisions covering the storage and transfer of petroleum liquids shall be deemed to be a violation of this chapter, and the Commissioner may take appropriate enforcement action pursuant to the provisions of this chapter.

§ 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.

A. Any person who:

1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person at the scene of an accident, fire, or any life-threatening emergency, or en route therefrom to any hospital, medical clinic or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

2. In the absence of gross negligence, renders emergency obstetrical care or assistance to a female in active labor who has not previously been cared for in connection with the pregnancy by such person or by another professionally associated with such person and whose medical records are not reasonably available to such person shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care or assistance. The immunity herein granted shall apply only to the emergency medical care provided.

3. In good faith and without compensation, including any emergency medical services technician certified by the Board of Health, administers epinephrine in an emergency to an individual shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if such person has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

4. Provides assistance upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission or storage of liquefied petroleum gas, liquefied natural gas, hazardous material or hazardous waste as defined in § 18.2-278.1 or regulations of the ~~Virginia Waste~~

~~Management~~ ~~Board~~*Virginia Board of Environmental Quality* shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance in good faith.

5. Is an emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance whether in person or by telephone or other means of communication, without compensation, to any injured or ill person, whether at the scene of an accident, fire or any other place, or while transporting such injured or ill person to, from or between any hospital, medical facility, medical clinic, doctor's office or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance, including but in no way limited to acts or omissions which involve violations of State Department of Health regulations or any other state regulations in the rendering of such emergency care or assistance.

6. In good faith and without compensation, renders or administers emergency cardiopulmonary resuscitation, cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator, or other emergency life-sustaining or resuscitative treatments or procedures which have been approved by the State Board of Health to any sick or injured person, whether at the scene of a fire, an accident or any other place, or while transporting such person to or from any hospital, clinic, doctor's office or other medical facility, shall be deemed qualified to administer such emergency treatments and procedures and shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

7. Operates an automated external defibrillator at the scene of an emergency, trains individuals to be operators of automated external defibrillators, or orders automated external defibrillators, shall be immune from civil liability for any personal injury that results from any act or omission in the use of an automated external defibrillator in an emergency where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances, unless such personal injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency care.

8. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol System, Inc., who, in good faith and without compensation, renders emergency care or assistance to any injured or ill person, whether at the scene of a ski resort rescue, outdoor emergency rescue or any other place or while transporting such injured or ill person to a place accessible for transfer to any available emergency medical system unit, or any resort owner voluntarily providing a ski patroller employed by him to engage in rescue or recovery work at a resort not owned or operated by him, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance, including but not limited to acts or omissions which involve violations of any state regulation or any standard of the National Ski Patrol System, Inc., in the rendering of such emergency care or assistance, unless such act or omission was the result of gross negligence or willful misconduct.

9. Is an employee of a school board, authorized by a prescriber and trained in the administration of insulin and glucagon, who, upon the written request of the parents as defined in § 22.1-1, assists with the administration of insulin or administers glucagon to a student diagnosed as having diabetes who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered according to the child's medication schedule or such employee has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any employee of a school board is covered by the immunity granted herein, the school board employing him shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

B. Any licensed physician serving without compensation as the operational medical director for a licensed emergency medical services agency in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency medical services in good faith by the personnel of such licensed agency unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any person serving without compensation as a dispatcher for any licensed public or nonprofit emergency services agency in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency services in good faith by the personnel of such licensed agency unless such act or omission was the result of such dispatcher's gross negligence or willful misconduct.

Any individual, certified by the State Office of Emergency Medical Services as an emergency medical services instructor and pursuant to a written agreement with such office, who, in good faith and

in the performance of his duties, provides instruction to persons for certification or recertification as a certified basic life support or advanced life support emergency medical services technician shall not be liable for any civil damages for acts or omissions on his part directly relating to his activities on behalf of such office unless such act or omission was the result of such emergency medical services instructor's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a medical advisor to an E-911 system in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911 service, as defined in § 58.1-1730, when answering emergency calls unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician who directs the provision of emergency medical services, as authorized by the State Board of Health, through a communications device shall not be liable for any civil damages for any act or omission resulting from the rendering of such emergency medical services unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a supervisor of an automated external defibrillator in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to the owner of the automated external defibrillator relating to personnel training, local emergency medical services coordination, protocol approval, automated external defibrillator deployment strategies, and equipment maintenance plans and records unless such act or omission was the result of such physician's gross negligence or willful misconduct.

C. Any communications services provider, as defined in § 58.1-647, including mobile service, and any provider of Voice-over-Internet Protocol service, in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

Any volunteer engaging in rescue or recovery work at a mine or any mine operator voluntarily providing personnel to engage in rescue or recovery work at a mine not owned or operated by such operator, shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue or recovery work in good faith unless such act or omission was the result of gross negligence or willful misconduct. For purposes of this subsection, the term "Voice-over-Internet Protocol service" or "VoIP service" means any Internet protocol-enabled services utilizing a broadband connection, actually originating or terminating in Internet Protocol from either or both ends of a channel of communication offering real time, multidirectional voice functionality, including, but not limited to, services similar to traditional telephone service.

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

E. (Expires July 1, 2008) 1. In the absence of gross negligence or willful misconduct, a health care provider shall not be liable in any civil action resulting from (i) injuries to any health care worker sustained in connection with administration of the vaccinia (smallpox) vaccine or other smallpox countermeasure, or (ii) any injuries to any other person sustained as a result of such other person coming into contact, directly or indirectly, with a health care worker; provided the vaccinia (smallpox) vaccine or smallpox countermeasure was administered and monitored in accordance with the recommendations of the Centers for Disease Control and Prevention in effect at the time of the vaccinia (smallpox) vaccine or other smallpox countermeasure administration. Nothing in this subsection shall preclude an injured health care worker, who is otherwise eligible for workers' compensation benefits pursuant to Title 65.2, from receipt of such benefits.

2. In the absence of gross negligence or willful misconduct, a health care worker shall not be liable in any civil action for injuries to any other person sustained as a result of such other person coming into contact, directly or indirectly, with a health care worker, provided the vaccinia (smallpox) vaccine or smallpox countermeasure was administered and monitored in accordance with the recommendations of the Centers for Disease Control and Prevention in effect at the time of the vaccinia (smallpox) vaccine or other smallpox countermeasure administration.

3. For the purposes of this subsection, "health care provider" means a health care provider participating in a smallpox preparedness program, pursuant to a declaration by the United States Department of Health and Human Services (HHS), through which individuals associated with the health care provider have received the vaccinia (smallpox) vaccine or other smallpox countermeasure defined by HHS from any hospital, clinic, state or local health department, or any other entity that is identified by state or local government entities or the HHS to participate in a vaccination program.

4. For the purposes of this subsection, "health care worker" means a health care worker to whom the vaccinia (smallpox) vaccine or other smallpox countermeasure has been administered as part of a smallpox preparedness program pursuant to a declaration by HHS. Such health care workers shall

include but shall not be limited to: (i) employees of a health care provider referenced in subdivision 3, (ii) independent contractors with a health care provider referenced in subdivision 3, (iii) persons who have practice privileges in a hospital, (iv) persons who have agreed to be on call in an emergency room, (v) persons who otherwise regularly deliver prehospital care to patients admitted to a hospital, and (vi) first responders who, for the purposes of this section, are defined as any law-enforcement officer, firefighter, emergency medical personnel, or other public safety personnel functioning in a role identified by a federal, state, or local emergency response plan.

F. For the purposes of this section, the term "compensation" shall not be construed to include (i) the salaries of police, fire or other public officials or personnel who render such emergency assistance, (ii) the salaries or wages of employees of a coal producer engaging in emergency medical technician service or first aid service pursuant to the provisions of § 45.1-161.38, 45.1-161.101, 45.1-161.199 or 45.1-161.263, (iii) complimentary lift tickets, food, lodging or other gifts provided as a gratuity to volunteer members of the National Ski Patrol System, Inc., by any resort, group or agency, or (iv) the salary of any person who (a) owns an automated external defibrillator for the use at the scene of an emergency, (b) trains individuals, in courses approved by the Board of Health, to operate automated external defibrillators at the scene of emergencies, (c) orders automated external defibrillators for use at the scene of emergencies, or (d) operates an automated external defibrillator at the scene of an emergency.

For the purposes of this section, an emergency medical care attendant or technician shall be deemed to include a person licensed or certified as such or its equivalent by any other state when he is performing services which he is licensed or certified to perform by such other state in caring for a patient in transit in this Commonwealth, which care originated in such other state.

Further, the public shall be urged to receive training on how to use cardiopulmonary resuscitation (CPR) and an automated external defibrillator (AED) in order to acquire the skills and confidence to respond to emergencies using both CPR and an AED.

§ 10.1-1182. Definitions.

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

"Board" means the Virginia Board of Environmental Quality.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Environment" means the natural, scenic and historic attributes of the Commonwealth.

"Special order" means an administrative order issued to any party that has a stated duration of not more than twelve months and that may include a civil penalty of not more than $10,000.

§ 10.1-1185. Appointment of Director; powers and duties of Director.

The Department shall be headed by a Director appointed by the Governor to serve at his pleasure ~~for a term coincident with his own~~. The Director of the Department of Environmental Quality shall, under the direction and control of the Governor, exercise such power and perform such duties as are conferred or imposed upon him by law and shall perform such other duties as may be required of him by the Governor ~~and the following Boards: the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board~~ *and the Board*. The Director or his designee shall serve as executive officer of the ~~aforementioned Boards~~*Board*.

All powers and duties conferred or imposed upon the Executive Director of the Department of Air Pollution Control, the Executive Director of the State Water Control Board, the Administrator of the Council on the Environment, and the Director of the Department of Waste Management are continued and conferred or imposed upon the Director of the Department of Environmental Quality or his designee. *All powers and duties conferred or imposed upon the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board and not expressly granted to the Virginia Board of Environmental Quality are continued and conferred or imposed upon the Director of the Department of Environmental Quality.* Wherever in this title and in the Code of Virginia reference is made to *a board or* the head of a *board,* division, department or agency hereinafter transferred to this Department, it shall mean the Director of the Department of Environmental Quality.

§ 10.1-1186. General powers of the Department.

The Department shall have the following general powers, any of which the Director may delegate as appropriate:

1. Employ such personnel as may be required to carry out the duties of the Department;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, other state agencies and governmental subdivisions of the Commonwealth;

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions

and execute such agreements as may be necessary, convenient, or desirable;

4. Accept and administer services, property, gifts and other funds donated to the Department;

5. Implement all regulations as may be adopted by the ~~State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board~~*Virginia Board of Environmental Quality*;

6. Administer~~, under the direction of the Boards,~~ funds appropriated to it for environmental programs and make contracts related thereto;

7. Initiate and supervise programs designed to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solutions, population and its relation to environmental problems, and other matters concerning environmental quality;

8. Advise and coordinate the responses of state agencies to notices of proceedings by the ~~State Water Control Board~~ *Director* to consider certifications of hydropower projects under 33 U.S.C. § 1341;

9. Advise interested agencies of the Commonwealth of pending proceedings when the Department of Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory Commission proceeding or when the Department of Game and Inland Fisheries intervenes in a Federal Energy Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the proceedings;

10. Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the provisions of any law administered by the ~~Boards, the~~ Director ~~or the Department~~, (ii) any condition of a permit or a certification, (iii) any regulations of the ~~Boards~~*Board*, or (iv) any case decision, as defined in § 2.2-4001, of the ~~Boards or~~ Director. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in conjunction with issuance of special orders~~. For purposes of this subdivision, "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board~~; and

11. *Issue and enforce any permits, licenses, and certificates, including variances and exemptions thereto, for activities regulated by the Department.*

13. At his discretion, the Director may appoint an advisory board within the meaning of §2.2-2100 to advise the Director and to assist in carrying out his duties as prescribed in this title and Title 62.1. Members of the board shall be citizens of the Commonwealth and serve at the pleasure of the Director. Members shall not receive compensation for their services but shall be reimbursed for all reasonable and necessary expenses for the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

14. Perform all acts necessary or convenient to carry out the purposes of this chapter.

§ 10.1-1186.2. Supplemental environmental projects.

A. As used in this section, "supplemental environmental project" means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

B. The ~~State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board, or the~~ Director acting ~~on behalf of one of these boards or~~ under his own authority in issuing any administrative order, or any court of competent jurisdiction as provided for under this Code, may, in ~~its or~~ his *or its* discretion and with the consent of the person subject to the order, provide for such person to undertake one or more supplemental environmental projects. The project shall have a reasonable geographic nexus to the violation or, if no such project is available, shall advance at least one of the declared objectives of the environmental law or regulation that is the basis of the enforcement action. Performance of such projects shall be enforceable in the same manner as any other provision of the order.

C. The following categories of projects may qualify as supplemental environmental projects, provided the project otherwise meets the requirements of this section: public health, pollution prevention, pollution reduction, environmental restoration and protection, environmental compliance promotion, and emergency planning and preparedness. In determining the appropriateness and value of a supplemental environmental project, the following factors shall be considered by the enforcement authority: net project costs, benefits to the public or the environment, innovation, impact on minority or low income populations, multimedia impact, and pollution prevention. The costs of those portions of a supplemental environmental project that are funded by state or federal low-interest loans, contracts or grants shall be deducted from the net project cost in evaluating the project. In each case in which a supplemental environmental project is included as part of a settlement, an explanation of the project with any appropriate supporting documentation shall be included as part of the case file.

D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

E. Any decision whether or not to agree to a supplemental environmental project is within the sole discretion of the ~~applicable board,~~ official or court and shall not be subject to appeal.

F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable

federal law or any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

§ 10.1-1186.2:1. Impact of electric generating facilities.

A. The Department and the ~~State Air Pollution Control~~ Board have the authority to consider the cumulative impact of new and proposed electric generating facilities within the Commonwealth on attainment of the national ambient air quality standards.

B. The Department shall enter into a memorandum of agreement with the State Corporation Commission regarding the coordination of reviews of the environmental impacts of proposed electric generating facilities that must obtain certificates from the State Corporation Commission.

C. Prior to the close of the Commission's record on an application for certification of an electric generating facility pursuant to § 56-580, the Department shall provide to the State Corporation Commission a list of all environmental permits and approvals that are required for the proposed electric generating facility and shall specify any environmental issues, identified during the review process, that are not governed by those permits or approvals or are not within the authority of, and not considered by, the Department or other participating governmental entity in issuing such permits or approvals. The Department may recommend to the Commission that the Commission's record remain open pending completion of any required environmental review, approval or permit proceeding. All agencies of the Commonwealth shall provide assistance to the Department, as requested by the Director, in preparing the information required by this subsection.

§ 10.1-1186.4. Enforcement powers; federal court.

In addition to the authority of the ~~State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board and the~~ Director to bring actions in the courts of the Commonwealth to enforce any law, regulation, case decision or condition of a permit or certification, the Attorney General is hereby authorized on behalf of ~~such boards or~~ the Director to seek to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure in any action then pending in a federal court in order to resolve a dispute already being litigated in that court by the United States through the Environmental Protection Agency.

§ 10.1-1187.1. Definitions.

~~"Board or Boards"~~ *"Board"* means the ~~State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board~~*Virginia Board of Environmental Quality*.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Environmental Management System" means a comprehensive, cohesive set of documented policies and procedures adopted by a facility or person and used to establish environmental goals, to meet and maintain those goals, to evaluate environmental performance and to achieve measurable or noticeable improvements in environmental performance, through planning, documented management and operational practices, operational changes, self assessments, and management review. The term shall include, but not be limited to, any such system developed in accordance with the International Standards of Operation 14001 standards.

"E2" means an environmental enterprise.

"E3" means an exemplary environmental enterprise.

"E4" means an extraordinary environmental enterprise.

"Facility" means a manufacturing, business, agricultural, or governmental site or installation involving one or more contiguous buildings or structures under common ownership or management.

"Record of sustained compliance" means that the person or facility (i) has no judgment or conviction entered against it, or against any key personnel of the person or facility or any person with an ownership interest in the facility for a criminal violation of environmental protection laws of the United States, the Commonwealth, or any other state in the previous five years; (ii) has been neither the cause of, nor liable for, more than two significant environmental violations in the previous three years; (iii) has no unresolved notices of violations or potential violations of environmental requirements ~~with the Department or one of the Boards~~; (iv) is in compliance with the terms of any order or decree, executive compliance agreement, or related enforcement measure issued by the ~~Department, one of the Boards,~~*Director* or the U.S. Environmental Protection Agency; and (v) has not demonstrated in any other way an unwillingness or inability to comply with environmental protection requirements.

§ 10.1-1187.3. Program categories and criteria.

A. The Director shall establish different categories of participation and the criteria and benefits for each category. Such categories shall include, but not be limited to: (i) E2 facilities, (ii) E3 facilities, and (iii) E4 facilities.

B. In order to participate as an E2 facility, a person or facility shall demonstrate that it (i) is developing an environmental management system or has initiated implementation of an environmental management system, (ii) has a commitment to pollution prevention and a plan to reduce environmental

impacts from its operations, and (iii) has a record of sustained compliance with environmental requirements. To apply to become an E2 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality, (b) an evaluation of the applicant's environmental impacts, (c) the applicant's objectives and targets for addressing significant environmental impacts, and (d) a description of the applicant's pollution prevention program. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E2 facilities may include, but are not limited to, the following: public recognition of facility performance and reduced fees.

C. In order to participate as an E3 facility, a person or facility shall demonstrate that it has (i) a fully-implemented environmental management system, (ii) a pollution prevention program with documented results, and (iii) a record of sustained compliance with environmental requirements. To apply to become an E3 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality; (b) an evaluation of the applicant's actual and potential environmental impacts; (c) the applicant's objectives and targets for addressing significant environmental impacts; (d) a description of the applicant's pollution prevention program; (e) identification of the applicant's environmental legal requirements; (f) a description of the applicant's environmental management system that identifies roles, responsibilities and authorities, reporting and record-keeping, emergency response procedures, staff training, monitoring, and corrective action processes for noncompliance with the environmental management system; (g) voluntary self-assessments; and (h) procedures for internal and external communications. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E3 facilities may include, but are not limited to, the following: public recognition of facility performance, reduced fees, reduced inspection priority, a single point-of-contact between the facility and the Department, streamlined environmental reporting, reduced monitoring requirements, prioritized permit and permit amendment review, and the ability to implement alternative compliance measures approved by the ~~appropriate~~ ~~Board~~ *Director* in accordance with § 10.1-1187.6.

D. In order to participate as an E4 facility, a person or facility shall meet the criteria for participation as an E3 facility, and shall have (i) implemented and completed at least one full cycle of an environmental management system as verified by an unrelated third-party qualified to audit environmental management systems and (ii) committed to measures for continuous and sustainable environmental progress and community involvement. To apply to become an E4 facility, an applicant shall submit (a) the information required to apply to become an E3 facility, (b) documentation evidencing implementation and completion of at least one full cycle of an environmental management system and evidencing review and verification by an unrelated third party, and (c) documentation that the applicant has committed to measures for continuous and sustainable environmental progress and community involvement. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E4 facilities may include all of the incentives available to E3 facilities. Any facility or person that has been accepted into the National Performance Track Programs by the U.S. Environmental Protection Agency shall be deemed to be an E4 facility. If acceptance in the Program is revoked or suspended by the U.S. Environmental Protection Agency, participation as an E4 facility shall also be terminated or suspended.

§ 10.1-1187.6. Approval of alternate compliance methods.

A. To the extent consistent with federal law and notwithstanding any other provision of law, the ~~Air Pollution Control Board, the Waste Management Board, and the State Water Control Board~~*Director* may grant alternative compliance methods to ~~the~~ regulations adopted ~~pursuant to their authorities, respectively, under §§ 10.1-1308, 10.1-1402, and 62.1-44.15~~ *by the Board* for persons or facilities that have been accepted by the Department as meeting the criteria for E3 and E4 facilities under § 10.1-1187.3, including but not limited to changes to monitoring and reporting requirements and schedules, streamlined submission requirements for permit renewals, the ability to make certain operational changes without prior approval, and other changes that would not increase a facility's impact on the environment. Such alternative compliance methods may allow alternative methods for achieving compliance with prescribed regulatory standards, provided that the person or facility requesting the alternative compliance method demonstrates that the method will (i) meet the purpose of the applicable regulatory standard, (ii) promote achievement of those purposes through increased reliability, efficiency, or cost effectiveness, and (iii) afford environmental protection equal to or greater than that provided by the applicable regulatory standard. No alternative compliance method shall be approved that would alter an ambient air quality standard, ground water protection standard, or water quality standard and no alternative compliance method shall be approved that would increase the pollutants released to the environment, increase impacts to state waters, or otherwise result in a loss of wetland acreage.

B. Notwithstanding any other provision of law, an alternate compliance method may be approved

under this section after at least 30 days' public notice and opportunity for comment, and a determination that the alternative compliance method meets the requirements of this section.

C. Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable federal law or other requirement necessary for the Commonwealth to obtain or retain federal delegation or approval of any regulatory program. Before approving an alternate compliance method affecting any such program, ~~each~~ ~~Board~~ *the Director* may obtain the approval of the federal agency responsible for such delegation or approval. ~~Any~~ ~~one~~ ~~of~~ ~~the~~ ~~Boards~~*The Director* may withdraw approval of the alternate compliance method at any time if any conditions under which the alternate compliance method was originally approved change, or if the recipient has failed to comply with any of the alternative compliance method requirements.

D. Upon approval of the alternative compliance method under this section, the alternative compliance method shall be incorporated into the relevant permits as a minor permit modification with no associated fee. The permits shall also contain any such provisions that shall go into effect in the event that the participant fails to fulfill its obligations under the variance, or is removed from the program for reasons specified by the Director under subsection B of § 10.1-1187.4.

§ 10.1-1197.3. Purposes of Fund; loans to small businesses; administrative costs.

A. Moneys in the Fund shall be used to make loans or to guarantee loans to small businesses for the purchase and installation of environmental pollution control and prevention equipment certified by the Department as meeting the following requirements:

1. The air pollution control equipment is needed by the small business to comply with the federal Clean Air Act (42 U.S.C. § 7401 et seq.); or

2. The pollution control equipment will allow the small business to implement voluntary pollution prevention measures.

Moneys in the Fund may also be used to make loans or to guarantee loans to small businesses for the installation of voluntary agricultural best management practices, as defined in § 58.1-339.3.

B. The Department or its designated agent shall determine the terms and conditions of any loan. All loans shall be evidenced by appropriate security as determined by the Department or its designated agent. The Department, or its agent, may require any documents, instruments, certificates, or other information deemed necessary or convenient in connection with any loan from the Fund.

C. A portion of the Fund balance may be used to cover the reasonable and necessary costs of administering the Fund. Unless otherwise authorized by the Governor or his designee, the costs of administering the Fund shall not exceed a base year amount of $65,000 per year, using fiscal year 2000 as the base year, adjusted annually by the Consumer Price Index.

D. The Fund shall not be used to make loans to small businesses for the purchase and installation of equipment needed to comply with an enforcement action by the Department~~,~~ ~~the~~ ~~State~~ ~~Air~~ ~~Pollution~~ ~~Control~~ ~~Board,~~ ~~the~~ ~~State~~ ~~Water~~ ~~Control~~ ~~Board,~~ ~~or~~ ~~the~~ ~~Virginia~~ ~~Waste~~ ~~Management~~ ~~Board~~.

Article 1.01

Virginia Board of Environmental Quality.

§ 10.1-1187.01. Virginia Board of Environmental Quality.

The Virginia Board of Environmental Quality is hereby established as a policy board within the meaning of § 2.2-2100 in the executive branch of state government. The Virginia Board of Environmental Quality shall have the power to promulgate regulations as provided for under this title and Title 62.1, and to control and regulate its own affairs. All regulations adopted by the State Air Pollution Board, the State Water Control Board, and the Virginia Waste Management Board shall remain in effect until and unless superseded by new regulations adopted by the Virginia Board of Environmental Quality or, in the case of general permits, by the Director. All licenses and permits, including variances therefrom, issued by the State Air Pollution Board, the State Water Control Board, and the Virginia Waste Management Board shall remain in effect until expiration or until further action is taken by the Director. Any right of the State Air Pollution Board, the State Water Control Board, or the Virginia Waste Management Board to pursue or continue any enforcement against a regulated entity is hereby conferred to the Director. Any report, notice, or other communication owing to the State Air Pollution Board, the State Water Control Board, and the Virginia Waste Management Board shall be made to the Director.

§ 10.1-1187.02. Membership; qualifications; meetings.

A. The Virginia Board of Environmental Quality shall consist of 11 citizen members appointed by the Governor. The members of the Board shall be citizens of the Commonwealth and shall be selected on the basis of merit without regard to political affiliation. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall be no more strict than those which may be required by federal statute or regulations of the United States Environmental Protection Agency. The provisions of this section shall be in addition to the requirements of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

B. Initial appointments of members shall be staggered as follows: three gubernatorial appointees shall be appointed for a term of one year each; three gubernatorial appointees shall be appointed for a term of two years each; three gubernatorial appointees shall be appointed for a term of three years each; and two gubernatorial appointees shall be appointed for a term of four years each. Thereafter, all members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Any initial appointee selected from the current membership of the State Air Pollution Board, State Water Control Board, or the Virginia Waste Management Board shall not be subject to further confirmation by the General Assembly.

C. The Board shall elect a chairman and vice chairman from among its membership. The Director of the Department of Environmental Quality or his designee shall serve as an executive officer of the Board, but shall not serve as a voting member thereof. A simple majority of the voting members shall constitute a quorum.

D. The Board shall meet at least four times each year. Special meetings may be held at the call of the chairman, the Director, or upon the written request of two members. All members shall be notified of the time and place of any meeting at least five days in advance of the meeting. Members shall receive such compensation for the discharge of their duties as provided in § 2.2-2813. All members shall be reimbursed for reasonable and necessary expenses incurred in the discharge of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Environmental Quality.

E. The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file by the Director and available for public inspection.

§ 10.1-1232. Voluntary Remediation Program.

A. The ~~Virginia Waste Management Board~~*Virginia Board of Environmental Quality* shall promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes, or petroleum. The regulations shall apply where remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The regulations shall provide for the following:

1. The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal standards for soil, groundwater and sediments, taking into consideration scientific information regarding the following: (i) protection of public health and the environment, (ii) the future industrial, commercial, residential, or other use of the property to be remediated and of surrounding properties, (iii) reasonably available and effective remediation technology and analytical quantitation technology, (iv) the availability of institutional or engineering controls that are protective of human health or the environment, and (v) natural background levels for hazardous constituents;

2. The establishment of procedures that minimize the delay and expense of the remediation, to be followed by a person volunteering to remediate a release and by the Department in processing submissions and overseeing remediation;

3. The issuance of certifications of satisfactory completion of remediation, based on then-present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the Department determines that no further action is required;

4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law; and

5. Registration fees to be collected from persons conducting voluntary remediation to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of $5,000 or one percent of the cost of the remediation.

B. Persons conducting voluntary remediations pursuant to an agreement with the Department entered into prior to the promulgation of those regulations may elect to complete the cleanup in accordance with such an agreement or the regulations.

C. Certification of satisfactory completion of remediation shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 13 (§ 10.1-1300 et seq.) of this title, or any other applicable law.

D. At the request of a person who owns, operates, holds a security interest in or contracts for the purchase of property from which the contamination to be voluntarily remediated originates, the

Department is authorized to seek temporary access to private and public property not owned by such person conducting the voluntary remediation as may be reasonably necessary for such person to conduct the voluntary remediation. Such request shall include a demonstration that the person requesting access has used reasonable effort to obtain access by agreement with the property owner. Such access, if granted, shall be granted for only the minimum amount of time necessary to complete the remediation and shall be exercised in a manner that minimizes the disruption of ongoing activities and compensates for actual damages. The person requesting access shall reimburse the Commonwealth for reasonable, actual and necessary expenses incurred in seeking or obtaining access. Denial of access to the Department by a property owner creates a rebuttable presumption that such owner waives all rights, claims and causes of action against the person volunteering to perform remediation for costs, losses or damages related to the contamination as to claims for costs, losses or damages arising after the date of such denial of access to the Department. A property owner who has denied access to the Department may rebut the presumption by showing that he had good cause for the denial or that the person requesting that the Department obtain access acted in bad faith.

§ 10.1-1234. Limitations on liability.

A. The Director may, consistent with programs developed under the federal acts, make a determination to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law.

B. A bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (iv) the person does not impede the performance of any response action. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

C. An innocent land owner who holds title, security interest or any other interest in a brownfield site shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person made all appropriate inquiries into the previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law, (iv) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (v) the person does not impede the performance of any response action and if either (a) at the time the person acquired the interest, he did not know and had no reason to know that any hazardous substances had been or were likely to have been disposed of on, in, or at the site, or (b) the person is a government entity that acquired the site by escheat or through other involuntary transfer or acquisition. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

D. A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from real property that is not owned by that person shall not be considered liable for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if the person did not cause, contribute, or consent to the release or threatened release, the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, and if such person provides full cooperation, assistance and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

E. The provisions of this section shall not otherwise limit the authority of the Department~~, the State Water Control Board, the Virginia Waste Management Board, or the State Air Pollution Control Board~~ to require any person responsible for the contamination or pollution to contain or clean up sites where solid or hazardous waste or other substances have been improperly managed.

§ 10.1-1236. Access to abandoned brownfield sites.

A. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned brownfield site in order to investigate contamination, to abate any hazard caused by the improper management of substances within the jurisdiction of the Board, or to remediate the site. The petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner, operator or other responsible party and (ii) a plan approved by the Director and which is consistent with applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be considered a case decision as defined by § 2.2-4001.

B. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or state law or regulation who performs any investigative, abatement or remediation activities pursuant to this section shall not become subject to civil enforcement or remediation action under Chapter 14 (§ 10.1-1400 et seq.) of this title or other applicable state laws or to private civil suits related to contamination not caused by its investigative, abatement or remediation activities.

C. This section shall not in any way limit the authority of the ~~Virginia Waste Management Board,~~ Director~~, or Department~~ otherwise created by Chapter 14 (§ 10.1-1400 et seq.) of this title.

CHAPTER 13.

AIR POLLUTION CONTROL.

§ 10.1-1300. Definitions.

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

~~"Advisory Board" means the State Advisory Board on Air Pollution.~~

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the ~~State Air Pollution Control Board~~*Virginia Board of Environmental Quality*.

"Department" means the Department of Environmental Quality.

"Director" or "Executive Director" means the ~~Executive~~ Director of the Department of Environmental Quality.

"Owner" shall have no connotation other than that customarily assigned to the term "person," but shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.

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

"Special order" means a special order issued under § 10.1-1309.

§ 10.1-1307. Powers of the Director.

A. ~~The Board shall have the power to control and regulate its internal affairs;~~*The Director shall have the power to* initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

~~B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.~~

~~C~~*B*. After any regulation has been adopted by the Board ~~pursuant to § 10.1-1308, it~~, *the Director* may, in ~~its~~*his* discretion grant local variances therefrom, if ~~it~~*the* finds after an investigation and hearing that local conditions warrant. If local variances are permitted, the Board*Director* shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Board*Director* after a hearing determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

~~D~~*C*. After the Board has adopted the regulations ~~provided for in § 10.1-1308, it~~, *the Director* shall have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce ~~its~~ regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions

for the enforcement of its orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

~~E~~*D*. The ~~Board~~*Director* ~~in making regulations and~~ in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

~~F. The Board may designate one of its members, the Director, or a staff assistant to conduct the hearings provided for in this chapter. A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.~~

~~G~~*E*. The ~~Board~~*Director* shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality.

F. The Director shall prepare State Implementation Plans in compliance with the federal Clean Air Act.

§ 10.1-1307.01. Localities particularly affected.

~~After June 30, 1994,~~ *If the Board,* before promulgating any regulation under consideration, *or if the Director, before* granting any variance to an existing regulation~~,~~ or issuing any permit for the construction of a new major source or for a major modification to an existing source, ~~if the Board~~ *respectively* finds that there are localities particularly affected by ~~the~~*such* regulation, variance or permit, the Board *or Department, as appropriate,* shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall provide information regarding specific pollutants and the total quantity of each which may be emitted and shall list the type and quantity of any fuels to be used.

2. Mail the notice to the chief elected official and chief administrative officer and the planning district commission for those localities.

Written comments shall be accepted by the Board *or the Director* for at least fifteen days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period *or the Director determines to shorten the period*.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

§ 10.1-1307.3. Director to enforce laws.

The ~~Executive~~ Director or his duly authorized representative shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations *adopted hereunder* ~~and orders of the Board as are conferred upon him by the Board~~;

2. Investigate any violations of this chapter and regulations ~~and orders~~ of the Board;

3. Require that air pollution records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulations ~~and orders~~ of the Board;

4. Upon presenting appropriate credentials to the owner, operator, or agent in charge:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the Director or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Director shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection; and

5. Temporarily suspend the enforcement of any regulation or permit requirement applicable to any part of an electrical generation and transmission system, whether owned or contracted for, when a public electric utility providing power within the Commonwealth so requests and has suffered a force majeure event as defined in subdivision 7 of § 59.1-21.18:2.

§ 10.1-1308. Powers of the Board; Regulations.

A. The Board~~, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement,~~ shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), 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. No such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.). *The Board shall not promulgate general permit regulations.*

B. Any regulation that prohibits the selling of any consumer product shall not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

C. Any regulation requiring the use of stage 1 vapor recovery equipment at gasoline dispensing facilities may be applicable only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment for the pollutant ozone. For purposes of this section, gasoline dispensing facility means any site where gasoline is dispensed to motor vehicle tanks from storage tanks.

D. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

E. The Director shall have the power to promulgate *general permit regulations.*

§ 10.1-1309. Issuance of special orders; civil penalties.

A. The ~~Board~~ *Director* shall have the power to issue special orders to:

(i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist from such pollution;

(ii) owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to and approved by the ~~Board~~*Director*, to construct such facilities in accordance with or otherwise comply with, such approved plans;

(iii) owners who have violated or failed to comply with the terms and provisions of any ~~Board~~ order or directive to comply with such terms and provisions;

(iv) owners who have contravened duly adopted and promulgated air quality standards and policies, to cease such contravention and to comply with air quality standards and policies;

(v) require any owner to comply with the provisions of this chapter and any ~~Board~~ decision; and

(vi) require any person to pay civil penalties of up to $32,500 for each violation, not to exceed $100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the ~~Board or the~~ Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subsection B. The actual amount of any penalty assessed shall be 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. The ~~Board~~*Director* shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination.

B. Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C below. Should the ~~Board~~*Director* find that any such owner is unreasonably

affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a reasonable attempt to give notice, it shall declare a state of emergency and may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within 10 days hold 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 the ~~Board~~*Director* finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 10.1-1316 or 10.1-1320.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the ~~Board~~*Director*, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 10.1-1307 shall limit the ~~Board's~~*Director's* authority to proceed against such owner directly under § 10.1-1316 or 10.1-1320 without the prior issuance of an order, special or otherwise.

§ 10.1-1309.1. Special orders; penalties.

The ~~Board~~*Director* is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the ~~Board~~*Director* a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the ~~Board~~*Director* may deem appropriate. The ~~Board~~*Director* may require that such plan and instruments be updated as appropriate. The ~~Board~~*Director* shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1310. Decision of Director pursuant to hearing.

Any decision by the ~~Board~~*Director* rendered pursuant to hearings under § 10.1-1309 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the ~~Board's~~*Director's* decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10.1-1310.1. Notification of local government.

Upon determining that there has been a violation of this chapter or any regulation ~~promulgated~~ ~~under this~~ ~~chapter~~ or order ~~of~~ ~~the~~ ~~Board~~ *hereunder*, and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the 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 section.

§ 10.1-1311. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Upon a determination of the amount by the Board, the ~~Board~~*Director* shall petition the circuit

court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, 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 this title.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

§ 10.1-1312. Air pollution control districts.

A. The ~~Board~~*Director* may create, within any area of the Commonwealth, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the ~~Board~~*Director* on ~~its~~*his* own motion or upon request of the governing body or bodies of the area involved.

B. In each district there shall be a local air pollution control committee, the members of which shall be appointed by the ~~Board~~*Director* from lists of recommended nominees submitted by the respective governing bodies of each locality, all or a portion of which are included in the district. The number of members on each committee shall be in the discretion of the ~~Board~~*Director*. When a district includes two or more localities or portions thereof, the ~~Board~~*Director* shall apportion the membership of the committee among the localities, provided that each locality shall have at least one representative on the committee. The members shall not be compensated out of state funds, but may be reimbursed for expenses out of state funds. Localities may provide for the payment of compensation and reimbursement of expenses to the members and may appropriate funds therefore. The portion of such payment to be borne by each locality shall be prescribed by agreement.

C. The local committee is empowered to observe compliance with the regulations ~~of~~ ~~the~~ ~~Board~~ and report instances of noncompliance to the ~~Board~~*Director*, to conduct educational programs relating to air pollution and its effects, to assist the Department in its air monitoring programs, to initiate and make studies relating to air pollution and its effects, and to make recommendations to the ~~Board~~*Director*.

D. The governing body of any locality, wholly or partially included within any such district, may appropriate funds for use by the local committee in air pollution control and studies.

§ 10.1-1314. Owners to furnish plans, specifications and information.

Every owner which the ~~Board~~*Director* has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the ~~Board~~*Director* furnish such plans, specifications and information as may be required by the ~~Board~~*Director* in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

§ 10.1-1314.1. Protection of trade secrets.

Any information, except emissions data, reported to or otherwise obtained by the Director~~,~~ ~~the~~ ~~Board~~, or ~~the~~*his* agents or employees, ~~of~~ ~~either~~ ~~which~~ *that* contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this chapter or the federal Clean Air Act or regulations and orders *hereunder* ~~of~~ ~~the~~ ~~Board~~. It shall be the duty of each owner to notify the Director or his representatives of the existence of trade secrets when he desires the protection provided herein.

§ 10.1-1315. Right of entry.

Whenever it is necessary for the purposes of this chapter, the ~~Board~~*Director* or any ~~member,~~ agent or employee thereof, when duly authorized by the ~~Board~~*Director*, may at reasonable times enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations.

§ 10.1-1316. Enforcement and civil penalties.

A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any ~~Board~~ regulation or order *hereunder,* or any permit condition may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under subsection A, any owner violating or failing, neglecting or refusing to obey any ~~Board~~ regulation or order *hereunder*, any provision of this chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to exceed $32,500 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business,

the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties 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 this title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any ~~Board~~ regulation or order, or any provision of this chapter, or any permit condition, the ~~Board~~*Director* may provide, in any order issued by the ~~Board~~*Director* against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B. 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 of this title.

D. The ~~Board~~*Director* 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.

§ 10.1-1316.1. Severe ozone nonattainment areas; fees.

A. Except as provided in subsection C, any owner of a stationary source that emits or has the potential to emit 25 tons or more per year of volatile organic compounds or 25 tons or more of nitrogen oxides and is located in an area designated by the U.S. Environmental Protection Agency as a severe ozone nonattainment area shall pay a fee to the Department for deposit in the Vehicle Emissions Inspection Program Fund, established pursuant to § 46.2-1182.2 to be used for air quality evaluation and improvements, if the area fails to attain the ambient air quality standard for ozone by the applicable attainment date established pursuant to 42 U.S.C. §§ 7502 and 7511 of the Clean Air Act. Such fees shall be assessed for emissions in each calendar year beginning in the year after the attainment date and for each calendar year thereafter as set forth in this section and shall continue until the area is redesignated as an attainment area for the ozone standard.

B. The fee shall be determined in accordance with the following:

1. The fee shall equal $5,000, adjusted in accordance with subdivision B 3, per ton of volatile organic compounds or nitrogen oxides emitted by the stationary source during the previous calendar year in excess of 80 percent of the baseline amount, computed under subdivision B 2.

2. For purposes of this section, the baseline amount shall be the lower of (i) the amount of actual volatile organic compounds or nitrogen oxide emissions or (ii) the amount of volatile organic compounds or nitrogen oxide emissions allowed under the permit applicable to the stationary source during the attainment year, or, if no such permit has been issued for the attainment year, the amount of volatile organic compounds or nitrogen oxide emissions allowed under the applicable implementation plan during the attainment year. The Department may calculate the baseline amount over a period of more than one calendar year, provided such determination is consistent with federal requirements.

3. The fee amount under subdivision B 1 shall be adjusted each year beginning in 1991 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the U.S. Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year. The revision of the Consumer Price Index that is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

C. Notwithstanding any provision of this section, no owner shall be required to pay any fee under subsection A with respect to emissions during any year that is treated as an extension year under 42 U.S.C. § 7511 (a) (5) of the Clean Air Act and no owner shall be required to pay any fee under subsection A if such fees would not otherwise be imposed pursuant to 42 U.S.C. § 7511d.

D. Payment is due by August 31 of each year. The Department shall issue annual notices of the fees to owners on or before August 1 of each year. Each notice shall include a summary of the data on which the fee is based. The Board may establish additional procedures for the assessment and collection of such fees. The failure to pay within 90 days from the receipt of the notice shall be grounds to institute a collection action against the owner of the stationary source.

E. Fees collected pursuant to this section shall not supplant or reduce the general fund appropriation to the Department.

F. These fees shall be used to pay expenses related to air quality monitoring and evaluation in the Commonwealth and measures to improve air quality in areas designated by the U.S. Environmental Protection Agency as severe nonattainment areas. The fees that may be generated may be used for matching grants.

§ 10.1-1318. Appeal from decision of Director.

A. Any owner aggrieved by a final decision of the ~~Board~~*Director* under § 10.1-1309, § 10.1-1322 or subsection ~~D~~*C* of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. 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~~*Director* under § 10.1-1322 and who has exhausted all available administrative remedies for review of the ~~Board's~~*Director's* decision, shall be entitled to judicial review of the ~~Board's~~*Director's* decision 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~~*Director* 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.

§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.

Any owner knowingly violating any provision of this chapter, ~~Board~~ *any* regulation or order *hereunder*, or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than $10,000 for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

§ 10.1-1320.1. Duty of attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this chapter or any regulation or order ~~of the Board~~, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

§ 10.1-1321. Local ordinances.

A. Existing local ordinances adopted prior to July 1, 1972, shall continue in force; however, in the event of a conflict between a ~~Board~~ regulation and a local ordinance adopted prior to July 1, 1972, the ~~Board~~ regulation shall govern, except when the conflicting local ordinance is more stringent.

B. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution after June 30, 1972, shall first obtain the approval of the ~~Board~~*Director* as to the provisions of the ordinance or amendment. No ordinance or amendment, except an ordinance or amendment pertaining solely to open burning, shall be approved by the ~~Board~~*Director* ~~which regulates~~*regulating* any emission source that is required to register with the ~~Board~~*Director* or to obtain a permit pursuant to this chapter and the ~~Board's~~ regulations *hereunder*.

§ 10.1-1322. Permits.

A. Pursuant to regulations ~~adopted by the Board~~, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders ~~of the Board~~under the provisions of this chapter.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the ~~Board's~~ operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of $25 per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The ~~Board~~*Director* shall also collect permit application fee amounts not to exceed $30,000 from applicants for a permit for a new major stationary

source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the ~~Board~~*Director*, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

I. [Expired.]

§ 10.1-1322.4. Permit modifications for alternative fuels or raw materials.

Unless required by the federal government, no additional permit or permit modifications shall be required ~~by the Board,~~ for the use, by any source, of an alternative fuel or raw material, if the owner demonstrates to the ~~Board~~*Director* that as a result of trial burns at their facility or other facilities or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.

§ 10.1-1323. Small business stationary source technical and environmental compliance assistance program.

A. There is hereby created within the Department a small business stationary source technical and environmental compliance assistance program to facilitate compliance by small business stationary sources with the provisions of the federal Clean Air Act. The program shall be administered by the Department.

B. Except as provided in subsections C and D of this section, any stationary source is eligible for the program that:

1. Is owned or operated by a person that employs 100 or fewer individuals;

2. Is a small business concern as defined in the federal Small Business Act;

3. Is not a major stationary source;

4. Does not emit fifty tons or more per year of any regulated pollutant; and

5. Emits less than seventy-five tons per year of all regulated pollutants.

C. Upon petition by a source owner, the ~~Board~~*Director* may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subdivision B 3, B 4 or B 5 of this section but which does not emit more than 100 tons per year of all regulated pollutants.

D. The ~~Board~~*Director*, in consultation with the Administrator of the United States Environmental Protection Agency and the Administrator of the United States Small Business Administration and after providing notice and opportunity for public hearing, may exclude as a small business stationary source for purposes of this article any category or subcategory of sources that the ~~Board~~*Director* determines to have sufficient technical and financial capabilities to meet the requirements of the federal Clean Air Act without the application of this section.

§ 10.1-1328. Emissions rates and limitations.

A. To ensure that the Commonwealth meets the emissions budgets established by the federal Environmental Protection Agency (EPA) in its CAIR, the Board shall promulgate regulations that provide:

1. Beginning on January 1, 2009, and each year continuing through January 1, 2014, all electric generating units within the Commonwealth shall collectively be allocated allowances of 36,074 tons of nitrogen oxide (NOx) annually, and 15,994 tons of NOx during an ozone season;

2. Beginning on January 1, 2010, and each year continuing through January 1, 2014, all electric

generating units within the Commonwealth shall collectively be allocated allowances of 63,478 tons of sulfur dioxide (SO2) annually, unless a different allocation is established by the Administrator of the EPA;

3. Beginning on January 1, 2015, all electric generating units within the Commonwealth shall collectively be allocated allowances of 44,435 tons of SO2 annually, 30,062 tons of NOx annually, and 13,328 tons of NOx during an ozone season, unless a different allocation is established for SO2 by the Administrator of the EPA;

4. The rules shall include a 5% set-aside of NOx allowances during the first five years of the program and 2% thereafter for new sources, including renewables and energy efficiency projects; and

5. The regulation shall provide for participation in the EPA-administered cap and trade system for NOx and SO2 to the fullest extent permitted by federal law except that ~~the Board may prohibit~~ electric generating facilities located within a nonattainment area in the Commonwealth *may be prohibited* from meeting their NOx and SO2 compliance obligations through the purchase of allowances from in-state or out-of-state facilities.

B. To further protect Virginia's environment regarding control of NOx emissions from electric generating units, the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of NOx from such units exceeded 40,000 tons in 2004 shall achieve an amount of early reductions in NOx emissions during the 2007 or 2008 annual control periods equal to the total number of allowances in the Virginia compliance supplement pool established by the EPA in the CAIR. The reductions achieved under this provision will be fully eligible for early reduction credits and allowance allocations provided from the compliance supplement pool under the early reduction credit provisions of the CAIR rule. The regulations shall include provisions for the distribution of the allowances from the Virginia compliance supplement pool established by the EPA for early reduction credits, and the state shall award the owner of electric generating units subject to this subsection NOx allowances in accordance therewith. The requirement to achieve early reductions of NOx under this subsection shall not restrict the ability to bank or sell the allowances provided to the owner under the early reduction credit provisions of the CAIR rule submitted to the EPA in the federal CAIR annual NOx trading program or restrict the ability of the use of such allowances to demonstrate compliance with the CAIR.

C. To ensure compliance with the EPA requirements regarding control of mercury emissions from electric generating units, the Board shall adopt and submit to the EPA the model Clean Air Mercury Rule (CAMR) promulgated by the EPA, including full participation by Virginia electric generating units in the EPA's national mercury trading program. This model rule shall include a set-aside of mercury allowances for new sources not to exceed 5% of the total state budget for each control period during the first five years of the program and 2% thereafter.

D. To further protect Virginia's environment regarding control of mercury emissions from electric generating units, the Board shall adopt a separate state-specific rule that shall not be submitted to the EPA. This state-specific rule shall apply to the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 200 pounds in 1999. This state-specific rule shall differ from the model CAMR only in the following respects:

1. For the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 900 pounds in 1999, the state-specific rule shall allocate a separate set of state-only mercury allowances equal to the CAMR allocation, and such owner shall be permitted to demonstrate compliance with the state-specific rule by showing that total mercury emissions from all of its electric generating units located within the Commonwealth do not exceed the total mercury allowances allocated to those units in the aggregate, and the compliance date for Phase 2 emission limits shall be January 1, 2015.

2. The owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from those units in 1999 were less than 900 pounds and whose combined capacity within the Commonwealth is greater than or equal to 600 MW, shall be permitted to satisfy its compliance obligations under the state-specific rule through the surrender of CAMR allowances that meet the following requirements: the allowances to be used are allocated to a facility under the control of the same owner or operator or under common control by the same parent corporation; the allowances used are generated and capable of being lawfully traded under the CAMR; and the surplus allowances are generated through the installation of emission controls at a facility located a straight line distance from the border of the Commonwealth of less than or equal to 200 km.

3. The owners subject to the state-specific rule shall not be permitted to purchase allowances to demonstrate compliance with the regulations the Board adopts to implement this subsection. This prohibition does not include the transfer of credits authorized by subdivision 2.

4. Nothing in the state-specific mercury rule shall be construed to prohibit the banking, use, or selling of allowances under the CAMR, and compliance with the CAMR and the state-specific mercury

rule shall be determined separately and in accordance with the terms of each rule.

E. The Board shall adopt regulations governing mercury emissions that meet, but do not exceed, the requirements and implementation timetables for (i) any coke oven batteries for which the EPA has promulgated standards under § 112(d) of the Clean Air Act, and (ii) facilities subject to review under § 112(k) of the Clean Air Act and that receive scrap metal from persons subject to § 46.2-635 of the Code of Virginia.

F. To further protect Virginia's environment, the Board shall *adopt regulations to* prohibit any electric generating facility located within a nonattainment area from meeting its mercury compliance obligations through the purchase of allowances from another facility, except that such facilities shall be able to demonstrate compliance with allowances allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200 km of Virginia's border.

§ 10.1-1400. Definitions.

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

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Board" means the ~~Virginia Waste Management Board~~*Virginia Board of Environmental Quality*.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the Director, which includes:

1. The full name, business address, and social security number of all key personnel;

2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years, in connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the Director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Equity" includes both legal and equitable interests.

"Federal acts" means any act of Congress providing for waste management and regulations promulgated thereunder.

"Hazardous material" means a substance or material in a form or quantity which may pose an

unreasonable risk to health, safety or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order.

"Hazardous substance" means a substance listed under United States Public Law 96-510, entitled the Comprehensive Environmental Response Compensation and Liability Act.

"Hazardous waste" means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hazardous waste generation" means the act or process of producing hazardous waste.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would be classified as a hazardous waste, including but not limited to, nickel, cadmium, mercuric oxide, manganese, zinc-carbon or lead batteries; solvent-based paint, paint thinner, paint strippers, or other paint solvents; any product containing trichloroethylene, toxic art supplies, used motor oil and unusable gasoline or kerosene, fluorescent or high intensity light bulbs, ammunition, fireworks, banned pesticides, or restricted-use pesticides as defined in § 3.1-249.27. All empty household product containers and any household products in legal distribution, storage or use shall not be considered household hazardous waste.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the Director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Securities Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage of such hazardous waste.

"Mixed radioactive waste" means radioactive waste that contains a substance which renders the mixture a hazardous waste.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

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

"Radioactive waste" or "nuclear waste" includes:

1. "Low-level radioactive waste" material that:

a. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e (2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014 (e) (2)); and

b. The Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste; or

2. "High-level radioactive waste" which means:

a. The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

b. Other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation.

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and paper which are to be recycled as part of a

resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption and utilization of recovered resources.

"Resource recovery" means the recovery of material or energy from solid waste.

"Resource recovery system" means a solid waste management system which provides for collection, separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues.

"Sanitary landfill" means a disposal facility for solid waste so located, designed and operated that it does not pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water.

"Sludge" means any solid, semisolid or liquid wastes with similar characteristics and effects generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, air pollution control facility or any other waste producing facility.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the ~~State Water Control Board~~*Director*, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.

"Solid waste management facility" means a site used for planned treating, long term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Transport" or "transportation" means any movement of property and any packing, loading, unloading or storage incidental thereto.

"Treatment" means any method, technique or process, including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any waste to neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or storage or reduced in volume.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Waste" means any solid, hazardous or radioactive waste as defined in this section.

"Waste management" means the collection, source separation, storage, transportation, transfer, processing, treatment and disposal of waste or resource recovery.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

§ 10.1-1402. Powers and duties of the Board and the Director.

~~The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:~~

1. ~~Supervise~~*The Director shall supervise* and control waste management activities in the Commonwealth.

2. ~~Consult,~~*The Director shall consult*, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.

3. ~~Provide~~*The Director shall provide* technical assistance and advice concerning all aspects of waste management.

4. ~~Develop~~*The Director shall develop* and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.

5. ~~Promote~~*The Director shall promote* the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.

6. ~~Collect~~*The Director shall collect* data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.

7. ~~Require~~*The Director shall require* any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.

8. ~~Designate~~*The Director shall designate*, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.

9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum

effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.

10. ~~Apply~~ *The Director shall apply* for federal funds and transmit such funds to appropriate persons.

11. ~~Promulgate and enforce~~*The Board shall promulgate* regulations~~, and provide for reasonable variances and exemptions~~*, but not general permit regulations,* necessary *for the Director* to carry out ~~its~~*his* powers and duties and the intent of this chapter and the federal acts, 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.

11a. The Director shall enforce regulations and promulgate general permit regulations and provide for variances and exemptions, 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.

12. ~~Subject~~*The Director shall, subject* to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the ~~Board~~*Director* as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the ~~Board~~*Director* may deem necessary or suitable for restricted areas. In all instances the ~~Board~~*Director* shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the ~~Board~~*Director* shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.

13. ~~Assume~~*The Director shall assume* responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.

14. ~~Collect~~*The Director shall collect*, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the ~~Board~~*Director* pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the ~~Board~~*Director* for the perpetual custody and maintenance of hazardous waste management facilities.

15a. ~~Collect~~*The Director shall collect*, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the ~~Board~~*Director* pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.

15b. ~~Collect~~*The Director shall collect* fees from large quantity generators of hazardous wastes.

16. ~~Collect~~*The Director shall collect*, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste: (i) permit application fees sufficient to defray only costs related to the issuance, reissuance, amendment or modification of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to issue, reissue, amend or modify such permits and (ii) annual fees established pursuant to § 10.1-1402.1:1. All such fees received by the ~~Board~~*Director* shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

17. ~~Issue~~*The Director shall issue*, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

18. ~~Make~~*The Director shall make* separate orders and *the Board shall make separate* regulations ~~it deems~~*deemed* necessary to meet any emergency to protect public health, natural resources and the environment from the release or imminent threat of release of waste.

19. ~~Take~~*The Director shall take* actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.

20. ~~Collect~~*The Director shall collect*, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and for investigations to identify parties responsible for such mismanagement.

21. ~~Abate~~*The Director shall abate* hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the *regulatory* jurisdiction of the Board.

22. Notwithstanding any other provision of law to the contrary, *the Board shall* regulate the management of mixed radioactive waste.

23. (Expires July 1, 2012) ~~Adopt~~*The Board shall adopt* regulations concerning the criteria and standards for removal of mercury switches by vehicle demolishers.

§ 10.1-1402.01. Localities particularly affected.

~~After June 30, 1994, before~~*If the Board, before* promulgating any regulation under consideration or *if the Director, before* granting any variance to an existing regulation~~,~~ or issuing any treatment, storage, or disposal permit, except for an emergency permit, ~~if the Board~~*respectively* finds that there are localities particularly affected by the regulation, variance or permit, the Board *or Department, as appropriate* shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the location and type of waste treated, stored or disposed.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board *or the Director* for at least fifteen days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period *or the Director determines to shorten the period*.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material environmental impact which would not be experienced by other localities. For the purposes of this section, the transportation of waste shall not constitute a material environmental impact.

§ 10.1-1402.1. Permit fee regulations.

Regulations promulgated by the Board which establish a permit fee assessment and collection system pursuant to subdivisions 15a, 15b and 16 of § 10.1-1402 shall be governed by the following:

1. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. No fees shall be charged for minor modifications or minor amendments to such permits. For purposes of this subdivision, "minor permit modifications" or "minor amendments" means specific types of changes, defined by the Board, that are made to keep the permit current with routine changes to the facility or its operation and that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

2. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the ~~Board~~*Director* shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

4. Fees collected pursuant to subdivisions 15a, 15b and 16 of § 10.1-1402 shall not supplant or reduce in any way the general fund appropriation to the ~~Board~~*Department*.

5. These permit fees shall be collected in order to recover a portion of the agency's costs associated with (i) the processing of an application to issue, reissue, amend or modify permits, ~~which the Board has authority to issue~~ for the purpose of more efficiently and expeditiously processing and maintaining permits and (ii) the inspections necessary to assure the compliance of large quantity generators of hazardous waste. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

§ 10.1-1402.2. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Waste Management ~~Board~~ Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to subdivision 16 of § 10.1-1402 shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The ~~Board~~*Director* is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under subdivision 16 of § 10.1-1402 ~~under the direction of the Director~~.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

§ 10.1-1405. Powers and duties of Director.

A. The Director, under the direction and control of the Secretary of Natural Resources, shall exercise such powers and perform such duties as are conferred or imposed upon him by law and shall perform any other duties required of him by the Governor or the Board.

B. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulation.

~~The Director shall be vested with all the authority of the Board when it is not in session, subject to such regulations as may be prescribed by the Board.~~

C. The Director shall serve as the liaison with the United States Department of Energy on matters concerning the siting of high-level radioactive waste repositories, pursuant to the terms of the Nuclear Waste Policy Act of 1982.

D. The Director shall obtain a criminal records check pursuant to § 19.2-389 of key personnel listed in the disclosure statement when the Director determines, in his sole discretion, that such a records check will serve the purposes of this chapter.

§ 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, 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.

§ 10.1-1425.23. Exemptions.

The following packaging and packaging components shall be exempt from the requirements of this Act:

1. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1995;

2. Packages or packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law, provided that (i) the manufacturer of a package or packaging component must petition the ~~Board~~*Director* for any exemption for a particular package or packaging component; (ii) the ~~Board~~*Director* may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals;

3. Packages and packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process for which there is no feasible alternative, provided that (i) the manufacturer of a package or packaging component must petition the ~~Board~~*Director* for any exemption for a particular package or packaging component; (ii) the ~~Board~~*Director* may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals. For purposes of this subdivision, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents;

4. Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recovered or recycled materials; and

5. Packages and packaging components used to contain alcoholic beverages, as defined in § 4.1-100, bottled prior to July 1, 1992.

§ 10.1-1427. Revocation, suspension or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board:

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

2. The person to whom the permit was issued abandons, sells, leases or ceases to operate the facility permitted;

3. The facilities used in the transportation, storage, treatment or disposal of hazardous waste are operated, located, constructed or maintained in such a manner as to pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water;

4. Such protective construction or equipment as is found to be reasonable, technologically feasible and necessary to prevent substantial present or potential hazard to human health and welfare or the environment has not been installed at a facility used for the storage, treatment or disposal of a hazardous waste; or

5. Any key personnel have been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act (§ 54.1-3400 et seq.); racketeering; violation of antitrust laws; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth, or any other state and the Director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

a. The nature and details of the acts attributed to key personnel;

b. The degree of culpability of the applicant, if any;

c. The applicant's policy or history of discipline of key personnel for such activities;

d. Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;

e. Whether the applicant has implemented formal management control to minimize and prevent the occurrence of such violations; and

f. Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for the violations or other demonstrations of good behavior by the applicant that the Director finds relevant to his decision.

B. The Director may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment;

2. There is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or ground water;

3. Investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or

4. The amendment is necessary to meet changes in applicable regulatory requirements.

C. If the Director finds that hazardous wastes are no longer being stored, treated or disposed of at a facility in accordance with Board regulations, the Director may revoke the permit issued for such facility or, as a condition to granting or continuing in effect a permit, may require the person to whom the permit was issued to provide perpetual care and surveillance of the facility.

§ 10.1-1431. Authority of *Director* to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

A. The ~~Board~~*Director*, with the prior approval of the Governor, is authorized to enter into agreements with the federal government, other states or interstate agencies, whereby the Commonwealth will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of low-level radioactive waste.

B. The ~~Board~~*Director* may institute programs to train personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program of the federal government, other states or interstate agencies in furtherance of this chapter.

§ 10.1-1432. Further powers of ~~Board~~*Director*.

The ~~Board~~*Director* shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the ~~Board~~*Director* as constituting necessary, desirable or acceptable sites for low-level radioactive waste management, including lands adjacent to a project site as in the discretion of the ~~Board~~*Director* may be necessary or suitable for restricted areas. In all instances lands that are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;

2. To convey or lease, for such term as in the discretion of the ~~Board~~*Director* may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease if the grantee or lessee ceases to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article. However, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States;

3. To assume responsibility for perpetual custody and maintenance of radioactive waste held for custodial purposes at any publicly or privately operated facility located within the Commonwealth if the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the ~~Board~~*Director* may collect fees from private or public parties holding radioactive waste for perpetual custodial purposes in order to finance such perpetual custody and maintenance as the ~~Board~~*Director* may undertake. The fees shall be sufficient in each individual case to defray the estimated cost of the ~~Board~~*Director*'s custodial management activities for that individual case. All such fees, when received by the ~~Board~~*Director*, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations; and

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used as custodial sites for radioactive waste.

§ 10.1-1433. Definitions.

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

"Applicant" means the person applying for a certification of site suitability or submitting a notice of intent to apply therefor.

"Application" means an application to the ~~Board~~*Director* for a certification of site suitability.

"Certification of site suitability" or "certification" means the certification issued by the ~~Board~~*Director* pursuant to this chapter.

"Criteria" means the criteria adopted by the Board, pursuant to § 10.1-1436.

"Fund" means the Technical Assistance Fund created pursuant to § 10.1-1448.

"Hazardous waste facility" or "facility" means any facility, including land and structures, appurtenances, improvements and equipment for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii) facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; (iii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works.

"Hazardous waste management facility permit" means the permit for a hazardous waste management facility issued by the Director or the U.S. Environmental Protection Agency.

"Host community" means any county, city or town within whose jurisdictional boundaries construction of a hazardous waste facility is proposed.

"On-site" means facilities that are located on the same or geographically contiguous property which may be divided by public or private right-of-way, and the entrance and exit between the contiguous properties is at a cross-roads intersection so that the access is by crossing, as opposed to going along, the right-of-way. On-site also means noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

"Operator" means a person who is responsible for the overall operation of a facility.

"Owner" means a person who owns a facility or a part of a facility.

"Storage" means the containment or holding of hazardous wastes pending treatment, recycling, reuse, recovery or disposal.

"Treatment" means any method, technique or process, including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste to neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or storage or reduced in volume.

§ 10.1-1434. Additional powers and duties of the Board and the Director.

A. In addition to its other powers and duties, with regard to hazardous waste the Board *or the Director* shall have the ~~power and duty to~~*following powers and duties*:

1. ~~Require~~*The Board shall require by regulation* that hazardous waste is treated, stored and disposed of properly;

2. ~~Provide~~*The Director shall provide* information to the public regarding the proper methods of hazardous waste disposal;

3. ~~Establish~~*The Board shall establish* procedures, where feasible, to eliminate or reduce the disproportionate burden which may be placed on a community in which is located a hazardous waste treatment, storage or disposal facility, by any means appropriate, including mitigation or compensation;

4. ~~Require~~*The Board shall require* that the Department compiles, maintains, and makes available to the public, information on the use and availability of conflict resolution techniques so that controversies and conflicts over the local impacts of hazardous waste facility siting decisions may be resolved by negotiation, mediation or similar techniques;

5. ~~Encourage~~*The Board and the Director shall*, whenever possible, alternatives to land burial of hazardous wastes, which will reduce, separate, neutralize, recycle, exchange or destroy hazardous wastes; and

6. ~~Regulate~~*The Board shall regulate* hazardous waste treatment, storage and disposal facilities and require that the costs of long-term post-closure care and maintenance of these facilities is born by their owners and operators.

B. In addition to its other powers and duties, with regard to certification of hazardous waste facility sites the Board *and the Director* shall have the ~~power and duty to~~*following powers and duties*:

1. Subject to the approval of the Governor, *the Director shall* request the use of the resources and services of any state department or agency for technical assistance in the performance of the ~~Board's~~*Director's* duties;

2. ~~Hold~~*The Director shall hold* public meetings or hearings on any matter related to the siting of hazardous waste facilities;

3. ~~Coordinate~~*The Board shall coordinate* the preparation ~~of~~ and ~~to~~ ~~adopt~~*adoption of* criteria for the siting of hazardous waste facilities;

4. ~~Grant~~*The Director shall grant* or deny certification of site approval for construction of hazardous waste facilities;

5. ~~Promulgate~~*The Board shall promulgate* regulations and procedures for approval of hazardous waste facility sites;

6. ~~Adopt~~*The Board shall adopt* a schedule of fees to charge applicants and to collect fees for the cost of processing applications and site certifications; and

7. ~~Perform~~*The Director shall perform* any acts authorized by this chapter under, through or by means of its own officers, agents and employees, or by contract with any person.

§ 10.1-1435. Certification of site approval required; "construction" defined; remedies.

A. No person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the ~~Board~~*Director* in the manner prescribed herein. For the purpose of this section, "construct" and "construction" mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than fifty percent of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the ~~Board~~*Director*, result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

B. Upon receiving a written request from the owner or operator of the facility, the ~~Board~~*Director* may allow, without going through the procedures of this article, any changes in the facilities which are designed to:

1. Prevent a threat to human health or the environment because of an emergency situation;

2. Comply with federal or state laws and regulations; or

3. Demonstrably result in safer or environmentally more acceptable processes.

C. Any person violating this section may be enjoined by the circuit court of the jurisdiction wherein the facility is located or the proposed facility is to be located. Such an action may be instituted by the ~~Board~~*Director*, the Attorney General, or the political subdivision in which the violation occurs. In any such action, it shall not be necessary for the plaintiff to plead or prove irreparable harm or lack of an adequate remedy at law. No person shall be required to post any injunction bond or other security under this section. No action may be brought under this section after a certification of site approval has been issued by the ~~Board~~*Director*, notwithstanding the pendency of any appeals or other challenges to the ~~Board's~~*Director's* action. In any action under this section, the court may award reasonable costs of litigation, including attorney and expert witness fees, to any party if the party substantially prevails on the merits of the case and if in the determination of the court the party against whom the costs are awarded has acted unreasonably.

§ 10.1-1436. Site approval criteria.

A. The Board shall promulgate criteria for approval of hazardous waste facility sites. The criteria shall be designed to prevent or minimize the location, construction, or operation of a hazardous waste facility from resulting in (i) any significant adverse impact on the environment and natural resources, and (ii) any significant adverse risks to public health, safety or welfare. The criteria shall also be designed to eliminate or reduce to the extent practicable any significant adverse impacts on the quality of life in the host community and the ability of its inhabitants to maintain quiet enjoyment of their property. The criteria shall ensure that previously approved local comprehensive plans are considered in the certification of hazardous waste facility sites.

B. To avoid, to the maximum extent feasible, duplication with existing agencies and their areas of responsibility, the criteria shall reference, and the ~~Board~~*Director* shall list in the draft and final certifications required hereunder, the agency approvals required and areas of responsibility concerning a site and its operation. The ~~Board~~*Director* shall not review or make findings concerning the adequacy of those agency approvals and areas of responsibility.

C. The Board shall make reasonable efforts to reduce or eliminate duplication between the criteria and other applicable regulations and requirements.

D. The criteria may be amended or modified by the Board at any time.

§ 10.1-1437. Notice of intent to file application for certification of site approval.

A. Any person may submit to the ~~Board~~*Director* a notice of intent to file an application for a certification of site approval. The notice shall be in such form as the Board may prescribe by regulation. Knowingly falsifying information, or knowingly withholding any material information, shall void the notice and shall constitute a felony punishable by confinement in the penitentiary for one year or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than

twelve months, a fine of not more than $10,000, or both.

Any state agency filing a notice of intent shall include therein a statement explaining why the Commonwealth desires to build a hazardous waste facility and how the public interest would be served thereby.

B. Within forty-five days of receipt of such a notice, the ~~Board~~*Director* shall determine whether it is complete. The ~~Board~~*Director* shall reject any incomplete notice, advise the applicant of the information required to complete it, and allow reasonable time to correct any deficiencies.

C. Upon receipt of the notice, the ~~Board~~*Director*, at the applicant's expense, shall:

1. Deliver or cause to be delivered a copy of the notice of intent together with a copy of this article to the governing body of each host community and to each person owning property immediately adjoining the site of the proposed facility; and

2. Have an informative description of the notice published in a newspaper of general circulation in each host community once each week for four successive weeks. The description shall include the name and address of the applicant, a description of the proposed facility and its location, the places and times where the notice of intent may be examined, the address and telephone number of the ~~Board~~*Director* or other state agency from which information may be obtained, and the date, time and location of the initial public briefing meeting on the notice.

§ 10.1-1438. Powers of governing body of host community; technical assistance.

A. The governing body of a host community shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host community in matters pertaining to the siting of the facility;

2. Receive and disburse moneys from the fund, and any other moneys as may be available; and

3. Enter into a contract, which may be assignable at the parties' option, binding upon the governing body of the host community and enforceable against it and future governing bodies of the host community in any court of competent jurisdiction, with an applicant by signing a siting agreement pursuant to § 10.1-1442.

B. The ~~Board~~*Director* shall make available to the governing body from the fund a reasonable sum of money to be determined by the ~~Board~~*Director*. This shall be used by the governing body to hire consultants to provide it with technical assistance and information necessary to aid the governing body in its review of the siting proposal, negotiations with the applicant and the development of a siting agreement.

Unused moneys from the fund shall be returned to the ~~Board~~*Director*. The governing body shall provide the ~~Board~~*Director* with a certified accounting statement of any moneys expended from the fund.

C. The governing body of the host community may appoint a local advisory committee to facilitate communication and the exchange of information among the local government, the community, the applicant and the ~~Board~~*Director*.

D. Notwithstanding the foregoing provisions of this article, the governing body of a host community may notify the ~~Board~~*Director*, within fifteen days after the briefing meeting pursuant to § 10.1-1439, that it has elected to waive further participation under the provisions of this article. After receiving notification from the host community, the ~~Board~~*Director* may issue certification of site approval without further participation by the host community under the provisions of this section and § 10.1-1442. Nothing shall prevent a host community from submitting comments on the application or participating in any public hearing or meeting held pursuant to this chapter, nor shall the host community be precluded from enforcing its regulations and ordinances as provided by subsection G of § 10.1-1446.

§ 10.1-1439. Briefing meetings.

A. Not more than seventy-five nor less than sixty days after the delivery of the notice of intent to the host community, the ~~Board~~*Director* shall conduct a briefing meeting in or in reasonable proximity to the host community. ~~A quorum of the Board shall be present.~~ Notice of the date, time, place and purpose of the briefing session shall be prepared by the ~~Board~~*Director* and shall accompany the notice of intent delivered pursuant to subdivision 1 of subsection C of § 10.1-1437 and shall be included in the notice published pursuant to subdivision 2 of subsection C of § 10.1-1437.

At least one representative of the applicant shall be present at the briefing meeting.

The ~~Board~~*Director* shall adopt procedures for the conduct of briefing meetings. The briefing meeting shall provide information on the proposed site and facility and comments, suggestions and questions thereon shall be received.

B. The ~~Board~~*Director* may conduct additional briefing meetings at any time in or near a host community, provided that at least fifteen days in advance of a meeting, notice of the date, time, place and purpose of the meeting is delivered in writing to the applicant, each member of the governing body and to all owners of property adjoining the proposed site.

C. A stenographic or electronic record shall be made of all briefing meetings. The record shall be available for inspection during normal business hours.

§ 10.1-1440. Impact analysis.

A. The applicant shall submit to the ~~Board~~*Director* a draft impact analysis for the proposed facility within ninety days after the initial briefing meeting. At the applicant's expense, copies of the draft impact analysis shall be furnished as follows: five to the host community, and one to each person owning property adjoining the site of the proposed facility. At least one copy shall be made available at a convenient location in the host community for public inspection and copying during normal business hours.

B. The draft impact analysis shall include a detailed assessment of the project's suitability with respect to the criteria and other information the Board may require by regulation.

C. The ~~Board~~*Director*, at the applicant's expense, shall cause notice of the filing of the draft impact analysis to be made in the manner provided in § 10.1-1447 within ten days of receipt. The notice shall include (i) a general description of the analysis, (ii) a list of recipients, (iii) a description of the places and times that the analysis will be available for inspection, (iv) a description of the ~~Board's~~ procedures for receiving comments on the analysis, and (v) the addresses and telephone numbers for obtaining information from the ~~Board~~*Director*.

D. The ~~Board~~*Director* shall allow forty-five days after publication of notice for comment on the draft impact analysis. No sooner than thirty and no more than forty days after publication of notice of the draft impact analysis, the ~~Board~~*Director* shall conduct a public meeting on the draft impact analysis in or near the host community. The meeting shall be for the purpose of explaining, answering questions and receiving comments on the draft impact analysis. A representative of the governing body and a representative of the applicant shall be present at the meeting.

E. Within ten days after the close of the comment period, the ~~Board~~*Director* shall forward to the applicant a copy of all comments received on the draft impact analysis, together with its own comments.

F. The applicant shall prepare and submit a final impact analysis to the ~~Board~~*Director* after receiving the comments. The final impact analysis shall reflect the comments as they pertain to each of the items listed in subsection B of this section. Upon request, a copy of the final impact analysis shall be provided by the applicant to each of the persons who received the draft impact analysis.

G. This section shall not apply when the host community has elected to waive participation under subsection D of § 10.1-1438.

§ 10.1-1441. Application for certification of site approval.

A. At any time within six months after submission of the final impact analysis, the applicant may submit to the ~~Board~~*Director* an application for certification of site approval. The application shall contain:

1. Conceptual engineering designs for the proposed facility;

2. A detailed description of the facility's suitability to meet the criteria promulgated by the Board, including any design and operation measures that will be necessary or otherwise undertaken to meet the criteria; and

3. A siting agreement, if one has been executed pursuant to subsection C of § 10.1-1442, or, if none has been executed, a statement to that effect.

B. The application shall be accompanied by whatever fee the Board, by regulation, prescribes pursuant to § 10.1-1434.

C. The ~~Board~~*Director* shall review the application for completeness and notify the applicant within fifteen days of receipt that the application is incomplete or complete.

If the application is incomplete, the ~~Board~~*Director* shall advise the applicant of the information necessary to make the application complete. The ~~Board~~*Director* shall take no further action until the application is complete.

If the application is complete, the ~~Board~~*Director* shall direct the applicant to furnish copies of the application to the following: five to the host community~~, one to the Director,~~ and one to each person owning property adjoining the proposed site. At least one copy of the application shall be made available by the applicant for inspection and copying at a convenient place in a host community during normal business hours.

D. The ~~Board~~*Director* shall cause notice of the application to be made in the manner provided in § 10.1-1447 and shall notify each governing body that upon publication of the notice the governing body shall conclude all negotiations with the applicant within thirty days of publication of the notice. The applicant and the governing body may, by agreement, extend the time for negotiation to a fixed date and shall forthwith notify the ~~Board~~*Director* of this date. The ~~Board~~*Director* may also extend the time to a fixed date for good cause shown.

If the host community has waived participation under the provisions of subsection D of § 10.1-1438, the ~~Board~~*Director* shall, at the time that notice of the application is made, request that the governing body submit, within thirty days of receiving notice, a report meeting the requirements of subdivision 2 of subsection E of this section.

E. At the end of the period specified in subsection D of this section, a governing body shall submit

to the ~~Board~~*Director* and to the applicant a report containing:

1. A complete siting agreement, if any, or in case of failure to reach full agreement, a description of points of agreement and unresolved points; and

2. Any conditions or restrictions on the construction, operation or design of the facility that are required by local ordinance.

F. If the report is not submitted within the time required, the ~~Board~~*Director* may proceed as specified in subsection A of § 10.1-1443.

G. The applicant may submit comments on the report of the governing body at any time prior to the issuance of the draft certification of site approval.

H. Notwithstanding any other provision of this chapter, if the host community has notified the ~~Board~~*Director*, pursuant to subsection D of § 10.1-1438, that it has elected to waive further participation hereunder, the ~~Board~~*Director* shall so notify the applicant within fifteen days of receipt of notice from the host community, and shall advise the applicant of the time for submitting its application for certification of site approval. The applicant shall submit its application within the time prescribed by the ~~Board~~*Director*, which time shall not be less than ninety days unless the applicant agrees to a shorter time.

§ 10.1-1442. Negotiations; siting agreement.

A. The governing body or its designated representatives and the applicant, after submission of notice of intent to file an application for certification of site approval, may meet to discuss any matters pertaining to the site and the facility, including negotiations of a siting agreement. The time and place of any meeting shall be set by agreement, but at least forty-eight hours' notice shall be given to members of the governing body and the applicant.

B. The siting agreement may include any terms and conditions, including mitigation of adverse impacts and financial compensation to the host community, concerning the facility.

C. The siting agreement shall be executed by the signatures of (i) the chief executive officer of the host community, who has been so directed by a majority vote of the local governing body, and (ii) the applicant or authorized agent.

D. The ~~Board~~*Director* shall assist in facilitating negotiations between the local governing body and the applicant.

E. No injunction, stay, prohibition, mandamus or other order or writ shall lie against the conduct of negotiations or discussions concerning a siting agreement or against the agreement itself, except as they may be conducted in violation of the provisions of this chapter or any other state or federal law.

§ 10.1-1443. Draft certification of site approval.

A. Within thirty days after receipt of the governing body's report or as otherwise provided in subsection F of § 10.1-1441, the ~~Board~~*Director* shall issue or deny a draft certification of site approval.

When application is made pursuant to subsection H of § 10.1-1441, the ~~Board~~*Director* shall issue or deny draft certification of site approval within ninety days after receipt of the completed application.

B. The ~~Board~~*Director* may deny the application for certification of site approval if it finds that the applicant has failed or refused to negotiate in good faith with the governing body for the purpose of attempting to develop a siting agreement.

C. The draft certification of site approval shall specify the terms, conditions and requirements that the ~~Board~~*Director* deems necessary to protect health, safety, welfare, the environment and natural resources.

D. Copies of the draft certification of site approval, together with notice of the date, time and place of public hearing required under § 10.1-1444, shall be delivered by the ~~Board~~*Director* to the governing body of each host community, and to persons owning property adjoining the site for the proposed facility. At least one copy of the draft certification shall be available at a convenient location in the host community for inspection and copying during normal business hours.

§ 10.1-1444. Public hearing on draft certification of site approval.

A. The ~~Board~~*Director* shall conduct a public hearing on the draft certification not less than fifteen nor more than thirty days after the first publication of notice. ~~A quorum of the Board shall be present.~~ The hearing shall be conducted in the host community.

B. Notice of the hearing shall be made at the applicant's expense and in the manner provided in § 10.1-1447. It shall include:

1. A brief description of the terms and conditions of the draft certification;

2. Information describing the date, time, place and purpose of the hearing;

3. The name, address and telephone number of an official designated by the ~~Board~~*Director* from whom interested persons may obtain access to documents and information concerning the proposed facility and the draft application;

4. A brief description of the rules and procedures to be followed at the hearing and the time for receiving comments; and

5. The name, address and telephone number of an official designated by the ~~Board~~*Director* to receive written comments on the draft certification.

C. The ~~Board~~*Director* shall designate a person to act as hearing officer for the receipt of comments and testimony at the public hearing. The hearing officer shall conduct the hearing in an expeditious and orderly fashion, according to such rules and procedures as the ~~Board~~*Director* shall prescribe.

D. A transcript of the hearing shall be made and shall be incorporated into the hearing record.

E. ~~Within fifteen days after the close of the hearing, the hearing officer shall deliver a copy of the hearing record to each member of the Board.~~ The hearing officer may prepare a summary to accompany the record, and this summary shall become part of the record.

§ 10.1-1445. Final decision on certification of site approval.

A. Within forty-five days after the close of the public hearing, the ~~Board~~*Director* shall meet within or near the host community and shall vote to issue or deny the certification of site approval. The ~~Board~~*Director* may include in the certification any terms and conditions which it deems necessary and appropriate to protect and prevent injury or adverse risk to health, safety, welfare, the environment and natural resources. At least seven days' notice of the date, time, place and purpose of the meeting shall be made in the manner provided in § 10.1-1447. No testimony or evidence will be received at the meeting.

B. The ~~Board~~*Director* shall grant the certification of site approval if it finds:

1. That the terms and conditions thereof will protect and prevent injury or unacceptable adverse risk to health, safety, welfare, the environment and natural resources;

2. That the facility will comply and be consistent with the criteria promulgated by the Board; and

3. That the applicant has made reasonable and appropriate efforts to reach a siting agreement with the host community including, though not limited to, efforts to mitigate or compensate the host community and its residents for any adverse economic effects of the facility. This requirement shall not apply when the host community has waived participation pursuant to subsection D of § 10.1-1438.

C. The ~~Board's~~*Director's* decision to grant or deny certification shall be based on the hearing record and shall be accompanied by the written findings of fact and conclusions upon which the decision was based. The ~~Board~~*Director* shall provide the applicant and the governing body of the host community with copies of the decision, together with the findings and conclusions, by certified mail.

D. The grant or denial of certification shall constitute final action by the ~~Board~~*Director*.

§ 10.1-1446. Effect of certification.

A. Grant of certification of site approval shall supersede any local ordinance or regulation that is inconsistent with the terms of the certification. Nothing in this chapter shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the certification of site approval. Grant of certification shall not preclude or excuse the applicant from the requirement to obtain approval or permits under this chapter or other state or federal laws. The certification shall continue in effect until it is amended, revoked or suspended.

B. The certification may be amended for cause under procedures and regulations prescribed by the Board.

C. The certification shall be terminated or suspended (i) at the request of the owner of the facility; (ii) upon a finding by the ~~Board~~*Director* that conditions of the certification have been violated in a manner that poses a substantial risk to health, safety or the environment; (iii) upon termination of the hazardous waste facility permit by the Director or the EPA Administrator; or (iv) upon a finding by the ~~Board~~*Director* that the applicant has knowingly falsified or failed to provide material information required in the notice of intent and application.

D. The facility owner shall promptly notify the ~~Board~~*Director* of any changes in the ownership of the facility or of any significant changes in capacity or design of the facility.

E. Nothing in the certification shall constitute a defense to liability in any civil action involving private rights.

F. The Commonwealth may not acquire any site for a facility by eminent domain prior to the time certification of site approval is obtained. However, any agency or representative of the Commonwealth may enter upon a proposed site pursuant to the provisions of § 25.1-203.

G. The governing body of the host community shall have the authority to enforce local regulations and ordinances to the extent provided by subsection A of this section and the terms of the siting agreement. The local governing body may be authorized by the ~~Board~~*Director* to enforce specified provisions of the certification.

§ 10.1-1447. Public participation; notice.

A. Public participation in the development, revision and implementation of regulations and programs under this chapter shall be provided for, encouraged and assisted by the Board *and the Director*.

B. Whenever notice is required to be made under the terms of this chapter, unless the context expressly and exclusively provides otherwise, it shall be disseminated as follows:

1. By publication once each week for two successive weeks in a newspaper of general circulation within the area to be affected by the subject of the notice;

2. By broadcast over one or more radio stations within the area to be affected by the subject of the notice;

3. By mailing to each person who has asked to receive notice; and

4. By such additional means as the Board *or Director* deems appropriate.

C. Every notice shall provide a description of the subject for which notice is made and shall include the name and telephone number of a person from whom additional information may be obtained.

§ 10.1-1448. Technical Assistance Fund.

A special fund, to be known as the Technical Assistance Fund, is created in the Office of the State Treasurer. The Fund shall consist of appropriations made to the Fund by the General Assembly. The ~~Board~~*Director* shall make moneys from the Fund available to any host community for the purposes set out in subsection C of § 10.1-1438.

§ 10.1-1450. Board to promulgate regulations regarding hazardous materials.

The Board shall promulgate regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported. Such regulations shall be no more restrictive than any applicable federal laws or regulations.

§ 10.1-1454.1. Regulation of wastes transported by water.

A. The Board shall develop regulations governing the commercial transport, loading and off-loading of nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth as are necessary to protect the health, safety, and welfare of the citizens of the Commonwealth and to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction. Included in the regulations shall be provisions governing (i) the issuance of permits by rule to facilities receiving nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth and (ii) to the extent allowable under federal law and regulation, the commercial transport of nonhazardous solid wastes (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste upon the navigable waters of the Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such waste.

B. 1. Included in the regulations shall be requirements, to the extent allowable under federal law, that: (a) containers holding wastes be watertight and be designed, constructed, secured and maintained so as to prevent the escape of wastes, liquids and odors and to prevent the loss or spillage of wastes in the event of an accident; (b) containers be tested at least two times a year and be accompanied by a certification from the container owner that such testing has shown that the containers are watertight; (c) each container be listed on a manifest designed to assure that the waste being transported in each container is suitable for the destination facility; and (d) containers be secured to the barges to prevent accidents during transportation, loading and unloading.

2. For the purposes of this section and the regulations promulgated hereunder, a container shall satisfy clauses (a) and (b) of subdivision B 1, if it meets the following requirements:

a. Each container shall be certified for special service by a Delegated Approval Authority approved by the U.S. Coast Guard in accordance with 49 CFR Parts 450 through 453 as having met the requirements for the approval of prototype containers described in §§ 1.5 and 1.17.2 of the Rules for Certification of Cargo Containers, 1998, American Bureau of Shipping, including a special container prototype test as follows: a minimum internal head of three inches of water shall be applied to all sides, seams, bottom and top of the container for at least 15 minutes of each side, seam, bottom and top, during which the container shall remain free from the escape of water.

b. Each container shall be certified by the Delegated Approval Authority as having passed the following test when the container is placed in service and at least once every six months thereafter while it remains in service:

(1) Each container shall have a minimum internal head of 24 inches of water applied to the container in an upright position for at least 15 minutes during which the container shall remain free from the escape of water. All wastewater and contaminated water resulting from this test procedure shall be disposed of in compliance with the applicable regulations of the ~~State Water Control~~ Board.

(2) Each container shall be visually inspected for damage on all sides, plus the top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.

c. Following each unloading of solid waste from a container, each container shall be visually inspected, as practical, at the solid waste management facility immediately upon unloading for damage

on all sides, plus top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.

3. It shall be a violation of this chapter if during transportation, holding, or storage operations, or in the event of an accident, there is an: (i) entry of liquids into a container; (ii) escape, loss, or spillage of wastes or liquids from a container; or (iii) escape of odors from a container.

C. A facility utilized to receive nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, or regulated medical waste from a ship, barge or other vessel regulated pursuant to subsection A, arriving at the facility upon the navigable waters of the Commonwealth, is a solid waste management facility and is subject to the requirements of this chapter. On and after the effective date of the regulations promulgated under subsection A, no new or existing facilities shall receive any wastes regulated under subsection A from a ship, barge or other vessel without a permit issued in accordance with the Board's regulations.

D. 1. The Board shall, by regulation, establish a fee schedule, payable by the owner or operator of any ship, barge or other vessel carrying, loading or off-loading waste regulated under this article on the navigable waters of the Commonwealth, for the purpose of funding the administrative and enforcement costs of this article associated with such operations including, but not limited to, the inspection and monitoring of such ships, barges or other vessels to ensure compliance with this article, and for funding activities authorized by this section to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

2. The owner or operator of a facility permitted to receive wastes regulated under this article from a ship, barge or other vessel shall be assessed a permit fee in accordance with the criteria set forth in § 10.1-1402.1. However, such fees shall also include an additional amount to cover the Department's costs for facility inspections that it shall conduct on at least a quarterly basis.

3. The fees collected pursuant to this article shall be deposited into a separate account within the Virginia Waste Management ~~Board~~ Permit Program Fund (§ 10.1-1402.2) and shall be treated as are other moneys in that fund except that they shall only be used for the purposes of this article, and for funding purposes authorized by this article to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

E. The Board shall promulgate regulations requiring owners and operators of ships, barges and other vessels transporting wastes regulated under this article to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Regulations governing the amount of any financial responsibility required shall take into consideration: (i) the risk of potential damage or injury to state waters and the impairment of beneficial uses that may result from spillage or leakage from the ship, barge or vessel; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or interference with general health, welfare and property that may result.

F. The owner or operator of a ship, barge or other vessel from which there is spillage or loss to state waters of wastes subject to regulations under this article shall immediately report such spillage or loss in accordance with the regulations of the Board and shall immediately take all such actions as may be necessary to contain and remove such wastes from state waters.

G. No person shall transport wastes regulated under this article on the navigable waters of the Commonwealth by ship, barge or other vessel unless such ship, barge or vessel and the containers carried thereon are designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of an accident. A violation of this subsection shall be a Class 1 misdemeanor. For the purposes of this subsection, the term "odors" means any emissions that cause an odor objectionable to individuals of ordinary sensibility.

H. The Director may grant variances for the commercial transport, loading, and off-loading of solid waste on waters of the Commonwealth from the requirements of this section provided: (i) travel on state waters is minimized; (ii) the solid waste is easily identifiable, is not hazardous, and is containerized so as to prevent the escape of liquids, waste, and odors; (iii) the containers are secured to the vessel to prevent spillage; (iv) the amount of solid waste transported does not exceed 300 tons annually; and (v) the activity will not occur when weather conditions pose a risk of the vessel losing its load.

§ 10.1-1455. Penalties and enforcement.

A. Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation or order ~~of the Board~~ shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than $32,500 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties 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 this title.

B. In addition to the penalties provided above, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste

without a permit or in violation of a permit; or who knowingly makes any false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than $32,500 for each violation, either or both. The provisions of this subsection shall be deemed to constitute a lesser included offense of the violation set forth under subsection I.

Each day of violation of each requirement shall constitute a separate offense.

C. The ~~Board~~*Director* is authorized to issue orders to require any person to comply with the provisions of any law administered by ~~the Board,~~ the Director ~~or the Department~~, any condition of a permit or certification, or any regulations promulgated ~~by the Board~~*hereunder* or to comply with any case decision, as defined in § 2.2-4001, of the ~~Board or~~ Director. Any such order shall be issued only after a hearing in accordance with § 2.2-4020 with at least 30 days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the ~~Board~~*Director* to issue separate orders and *the Board to issue* regulations to meet any emergency ~~as provided in § 10.1-1402~~.

D. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order ~~of the Board or the Director~~, any condition of a permit or certification or any provision of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order ~~of the Board or the Director~~, any condition of a permit or certification or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the ~~Board or the~~ Director to obey such regulation, permit, certification, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $32,500 for each violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order ~~of the Board or the Director~~, any condition of a permit or any provision of this chapter, the ~~Board~~*Director* may provide, in an order issued by the ~~Board~~*Director* against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section. 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 of this title.

G. In addition to all other available remedies, the ~~Board~~*Director* may issue administrative orders for the violation of (i) any law or regulation administered by the ~~Board~~*Director*; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the ~~Board~~*Director*. Issuance of an administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued pursuant to this subsection may include civil penalties of up to $32,500 per violation not to exceed $100,000 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. The ~~Board~~*Director* may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the ~~Board or the~~ Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty assessed shall be 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. The ~~Board~~*Director* shall provide the person with the

calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or mailed by certified mail to the last known address of such persons. Should the ~~Board~~*Director* find that any person is adversely affecting the public health, safety or welfare, or the environment, the ~~Board~~*Director* shall, after a reasonable attempt to give notice, issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the emergency administrative order. If the ~~Board~~*Director* finds that a person who has been issued an administrative order or an emergency administrative order is not complying with the order's terms, the ~~Board~~*Director* may utilize the enforcement and penalty provisions of this article to secure compliance.

H. In addition to all other available remedies, the Department and generators of recycling residues shall have standing to seek enforcement by injunction of conditions which are specified by applicants in order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

I. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of $1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

J. Criminal prosecutions under this chapter shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

K. The ~~Board~~*Director* shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the ~~Board~~*Director* under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

L. The ~~Board~~*Director* 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.

§ 10.1-1456. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law *or regulation* administered by the ~~Board,~~ Director ~~or Department, any regulations of the Board~~, any order of the ~~Board or~~ Director or any conditions in a permit, license or certificate issued by the ~~Board or~~ Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

§ 10.1-1457. Judicial review.

A. Except as provided in subsection B, any person aggrieved by a final decision of the ~~Board or~~ Director under this chapter shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by the submittal of written comments, in the public comment process related to a final decision of the ~~Board or~~ Director under § 10.1-1408.1 or § 10.1-1426 and who has exhausted all available administrative remedies for review of the ~~Board's or~~ Director's decision, shall be entitled to judicial review thereof in accordance with 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~~*Director* 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.

§ 10.1-1504. Director to enforce Compact; penalty.

The ~~Virginia Waste Management Board~~ *Director* is authorized to enforce the provisions of this chapter. Any person not an official of another party state to the Compact who violates any provision of this chapter shall be subject to a civil penalty of not more than $25,000 per day for each violation.

§ 10.1-2117. Definitions.

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

"Biological nutrient removal technology" means technology that will typically achieve at least an 8 mg/L total nitrogen concentration or at least a 1 mg/L total phosphorus concentration in effluent discharges.

"Chesapeake Bay Agreement" means the Chesapeake Bay Agreement of 2000 and any amendments thereto.

"Eligible nonsignificant discharger" means any publicly owned treatment works that is not a significant discharger but due to expansion or new construction is subject to a technology-based standard under § 62.1-44.19:15 or 62.1-44.19:16.

"Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§ 10.1-2128 et seq.) of this chapter.

"Individual" means any corporation, foundation, association or partnership or one or more natural persons.

"Institutions of higher education" means any educational institution meeting the requirements of § 60.2-220.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.

"Nonpoint source pollution" means pollution of state waters washed from the land surface in a diffuse manner and not resulting from a discernible, defined or discrete conveyance.

"Nutrient removal technology" means state-of-the-art nutrient removal technology, biological nutrient removal technology, or other nutrient removal technology.

"Point source pollution" means pollution of state waters resulting from any discernible, defined or discrete conveyances.

"Publicly owned treatment works" means a publicly owned sewage collection system consisting of pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances appurtenant thereto, or any equipment, plant, treatment works, structure, machinery, apparatus, interest in land, or any combination of these, not including an onsite sewage disposal system, that is used, operated, acquired, or constructed for the storage, collection, treatment, neutralization, stabilization, reduction, recycling, reclamation, separation, or disposal of wastewater, or for the final disposal of residues resulting from the treatment of sewage, including but not limited to: treatment or disposal plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations, facilities, and works; and other real or personal property and appurtenances incident to their development, use, or operation.

"Reasonable sewer costs" means the amount expended per household for sewer service in relation to the median household income of the service area as determined by guidelines developed and approved by the ~~State Water Control Board~~*Virginia Board of Environmental Quality* for use with the Virginia Water Facilities Revolving Fund established pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1.

"Significant discharger" means (i) a publicly owned treatment works discharging to the Chesapeake Bay watershed with a design capacity of 0.5 million gallons per day or greater, (ii) a publicly owned treatment works discharging to the Chesapeake Bay watershed east of the fall line with a design capacity of 0.1 million gallons per day or greater, (iii) a planned or newly expanding publicly owned treatment works discharging to the Chesapeake Bay watershed, which is expected to be in operation by 2010 with a permitted design of 0.5 million gallons per day or greater, or (iv) a planned or newly expanding publicly owned treatment works discharging to the Chesapeake Bay watershed east of the fall line with a design capacity of 0.1 million gallons per day or greater, which is expected to be in operation by 2010.

"State-of-the-art nutrient removal technology" means technology that will achieve at least a 3 mg/L total nitrogen concentration or at least a 0.3 mg/L total phosphorus concentration in effluent discharges.

"State waters" means all waters on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdictions.

"Tributary strategy plans" means plans that are developed by the Secretary of Natural Resources pursuant to the provisions of the Chesapeake Bay Agreement for the tidal tributaries of the Chesapeake Bay and the tidal creeks and embayments of the western side of the Eastern Shore of Virginia. This term shall include any amendments to the tributary strategy plans initially developed by the Secretary of

Natural Resources pursuant to the Chesapeake Bay Agreement.

"Water Quality Improvement Grants" means grants available from the Fund for projects of local governments, institutions of higher education, and individuals (i) to achieve nutrient reduction goals in tributary strategy plans or applicable regulatory requirements or (ii) to achieve other water quality restoration, protection or enhancement benefits.

§ 10.1-2129. Agency coordination; conditions of grants.

A. If, in any fiscal year beginning on or after July 1, 2005, there are appropriations to the Fund in addition to those made pursuant to subsection A of § 10.1-2128, the Secretary of Natural Resources shall distribute those moneys in the Fund provided from the 10 percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act, and the 10 percent of any unreserved general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act, as follows:

1. Seventy percent of the moneys shall be distributed to the Department of Conservation and Recreation and shall be administered by it for the sole purpose of implementing projects or best management practices that reduce nitrogen and phosphorus nonpoint source pollution, with a priority given to agricultural best management practices. In no single year shall more than 60 percent of the moneys be used for projects or practices exclusively within the Chesapeake Bay watershed; and

2. Thirty percent of the moneys shall be distributed to the Department of Environmental Quality, which shall use such moneys for making grants for the sole purpose of designing and installing nutrient removal technologies for publicly owned treatment works designated as significant dischargers or eligible nonsignificant dischargers. The moneys shall also be available for grants when the design and installation of nutrient removal technology utilizes the Public-Private Education Facilities and Infrastructure Act (§ 56-575.1 et seq.).

3. Except as otherwise provided in the Appropriation Act, in any fiscal year when moneys are not appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128, or when moneys appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128 are less than 40 percent of those specified in subsection A of § 10.1-2128, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and Conservation and Recreation, and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board~~, the State Water Control Board~~, *the Virginia Board of Environmental Quality,* and the Chesapeake Bay Local Assistance Board, and following a public comment period of at least 30 days and a public hearing, shall allocate those moneys deposited in the Fund between point and nonpoint sources, both of which shall receive moneys in each such year.

B. 1. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and Conservation and Recreation, and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board~~, the State Water Control Board~~, *the Virginia Board of Environmental Quality,* and the Chesapeake Bay Local Assistance Board, shall develop written guidelines that (i) specify eligibility requirements; (ii) govern the application for and the distribution and conditions of Water Quality Improvement Grants; and (iii) list criteria for prioritizing funding requests.

2. In developing the guidelines the Secretary shall evaluate and consider, in addition to such other factors as may be appropriate to most effectively restore, protect and improve the quality of state waters: (i) specific practices and programs proposed in any tributary strategy plan, and the associated effectiveness and cost per pound of nutrients removed; (ii) water quality impairment or degradation caused by different types of nutrients released in different locations from different sources; and (iii) environmental benchmarks and indicators for achieving improved water quality. The process for development of guidelines pursuant to this subsection shall, at a minimum, include (a) use of an advisory committee composed of interested parties; (b) a 60-day public comment period on draft guidelines; (c) written responses to all comments received; and (d) notice of the availability of draft guidelines and final guidelines to all who request such notice.

3. In addition to those the Secretary deems advisable to most effectively restore, protect and improve the quality of state waters, the criteria for prioritizing funding requests shall include: (i) the pounds of total nitrogen and the pounds of total phosphorus reduced by the project; (ii) whether the location of the water quality restoration, protection or improvement project or program is within a watershed or subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (iii) documented water quality impairment; and (iv) the availability of other funding mechanisms. Notwithstanding the provisions of subsection E of § 10.1-2131, the Director of the Department of Environmental Quality may approve a local government point source grant application request for any single project that exceeds the authorized grant amount outlined in subsection E of § 10.1-2131.

Whenever a local government applies for a grant that exceeds the authorized grant amount outlined in this chapter or when there is no stated limitation on the amount of the grant for which an application is made, the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The development or implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys allocated to nonpoint source pollution.

§ 10.1-2131. Point source pollution funding; conditions for approval.

A. The Department of Environmental Quality shall be the lead state agency for determining the appropriateness of any grant related to point source pollution to be made from the Fund to restore, protect or improve state water quality.

B. The Director of the Department of Environmental Quality shall, subject to available funds and in coordination with the Director of the Department of Conservation and Recreation, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The Director of the Department of Environmental Quality shall enter into grant agreements with all facilities designated as significant dischargers or eligible nonsignificant dischargers that apply for grants; however, all such grant agreements shall contain provisions that payments thereunder are subject to the availability of funds.

C. Notwithstanding the priority provisions of § 10.1-2129, the Director of the Department of Environmental Quality shall not authorize the distribution of grants from the Fund for purposes other than financing the cost of design and installation of nutrient removal technology at publicly owned treatment works until such time as all tributary strategy plans are developed and implemented unless he finds that there exists in the Fund sufficient funds for substantial and continuing progress in implementation of the tributary strategy plans. In addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include: (i) numerical technology-based effluent concentration limitations on nutrient discharges to state waters based upon the technology installed by the facility; (ii) enforceable provisions related to the maintenance of the numerical concentrations that will allow for exceedences of 0.8 mg/L for total nitrogen or no more than 10 percent, whichever is greater, for exceedences of 0.1 mg/L for total phosphorus or no more than 10%, and for exceedences caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking and revolving loan distribution criteria. If, pursuant to § 10.1-1187.6, the ~~State Water Control Board~~ *Director* approves an alternative compliance method to technology-based concentration limitations in Virginia Pollutant Discharge Elimination System permits, the concentration limitations of the grant agreement shall be suspended subject to the terms of such approval. The cost of the design and installation of nutrient removal technology at publicly owned treatment works meeting the nutrient reduction goal in an applicable tributary strategy plan or an applicable regulatory requirement and incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund provided the grant is made pursuant to an executed agreement consistent with the provisions of this chapter.

Subsequent to the implementation of the tributary strategy plans, the Director may authorize disbursements from the Fund for any water quality restoration, protection and improvements related to point source pollution that are clearly demonstrated as likely to achieve measurable and specific water quality improvements, including, but not limited to, cost effective technologies to reduce nutrient loads. Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize grants, including grants to institutions of higher education, for technical assistance related to nutrient reduction.

D. The grant percentage provided for financing the costs of the design and installation of nutrient removal technology at publicly owned treatment works shall be based upon the financial need of the community as determined by comparing the annual sewer charges expended within the service area to the reasonable sewer cost established for the community.

E. Grants shall be awarded in the following manner:

1. In communities for which the ratio of annual sewer charges to reasonable sewer cost is less than 0.30, the Director of the Department of Environmental Quality shall authorize grants in the amount of 35 percent of the costs of the design and installation of nutrient removal technology;

2. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.30 and less than 0.50, the Director shall authorize grants in the amount of 45 percent of the costs of the design and installation of nutrient removal technology;

3. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.50 and less than 0.80, the Director shall authorize grants in the amount of 60 percent of

the costs of design and installation of nutrient removal technology; and

4. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.80, the Director shall authorize grants in the amount of 75 percent of the costs of the design and installation of nutrient removal technology.

§ 10.1-2500. Virginia Environmental Emergency Response Fund established.

A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter referred to as the Fund, to be used (i) for the purpose of emergency response to environmental pollution incidents and for the development and implementation of corrective actions for pollution incidents, other than pollution incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as described in § 62.1-44.34:11 of the State Water Control Law, (ii) to conduct assessments of potential sources of toxic contamination in accordance with the policy developed pursuant to § 62.1-44.19:10, and (iii) to assist small businesses for the purposes described in § 10.1-1197.3.

B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to subsection B of § 10.1-1316 and civil charges assessed pursuant to subsection C of § 10.1-1316.

2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed pursuant to subsections A and E of § 10.1-1455 and civil charges assessed pursuant to subsection F of § 10.1-1455.

3. Civil charges assessed pursuant to subdivision 8d of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.), 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.

4. Civil penalties and civil charges assessed pursuant to § 62.1-270.

5. Civil penalties assessed pursuant to subsection A of § 62.1-252 and civil charges assessed pursuant to subsection B of § 62.1-252.

6. Civil penalties assessed in conjunction with special orders by the Director pursuant to § 10.1-1186 and ~~by the Waste Management Board pursuant to~~ subsection G of § 10.1-1455.

§ 15.2-924. Water supply emergency ordinances.

A. Whenever the governing body of any locality finds that a water supply emergency exists or is reasonably likely to occur if water conservation measures are not taken, it may adopt an ordinance restricting the use of water by the citizens of such locality for the duration of such emergency or for a period of time necessary to prevent the occurrence of a water supply emergency. However, such ordinance shall apply only to water supplied by a locality, authority, or company distributing water for a fee or charge. Such ordinance may include appropriate penalties designed to prevent excessive use of water, including, but not limited to, a surcharge on excessive amounts used.

B. After such an emergency has been declared in any locality, any owner of a water supply system serving that locality may apply to the ~~State Water Control Board~~*Director of the Department of Environmental Quality* for assistance. If the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* confirms the existence of an emergency, and finds that such owner and such locality have exhausted available means to relieve the emergency and that the owner and locality are applying all feasible water conservation measures, and in addition finds that there is water available in neighboring localities in excess of the reasonable needs of such localities, and that there exists between such neighboring localities interconnections for the transmission of water, the ~~Board~~*Director of the Department of Environmental Quality* shall so inform the Governor. The Governor, if requested jointly by the locality and the owner of the systems supplying the locality, may then appoint a committee consisting of one representative of the locality declaring the emergency, one representative of the system supplying the locality under emergency, and those two representatives shall choose a third representative and failing to choose such third representative within seven days he shall be selected by the Governor. The committee shall have the duty and authority to allocate the water available in such localities for the period of the emergency, provided that the period of the emergency shall not exceed that determined by the locality declaring the emergency or the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* whichever period termination is earlier, so that the best water supply possible will be provided to all water users during the emergency as previously described. Nothing in this section shall be construed as requiring the construction of pipeline interconnections between any locality or any water supply system.

C. Any water taken from one water supplier for the benefit of another shall be paid for by using the established rate schedule of the supplier for treated water. Raw water shall be furnished at rates which shall reflect all costs to the supplying locality, including, but not limited to, capital investment costs. Should there be imposed upon the supplier any additional obligation, water production costs or other capital or operating expenditures beyond those normal to the suppliers' system, then the cost of same

shall be chargeable to the receiving locality by single payment or by incorporation in a special rate structure, all of the same as shall be reasonable.

D. Nothing contained in this section shall authorize any locality to regulate the use of water taken from a river or any flowing stream when such water is used for industrial purposes and the approximate same quantity of water is returned to such river or stream after such industrial usage.

§ 15.2-2111. Regulation of sewage disposal or water service.

Any locality may exercise its powers to regulate sewage collection, treatment or disposal service and water service notwithstanding any anticompetitive effect. Such regulation may include the establishment of an exclusive service area for any sewage or water system, including a system owned or operated by the locality, the fixing of rates or charges for any sewage or water service, and the prohibition, restriction or regulation of competition between entities providing sewage or water service.

No power herein granted shall alter or amend the powers or the duties of any present or future authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) nor confer any right or responsibility upon the governing body of any locality which would supersede or be inconsistent with any of the duties or responsibilities of the ~~State Water Control Board~~*Virginia Board of Environmental Quality or the Director of the Department of Environmental Quality*.

§ 15.2-5101. Definitions.

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

"Authority" means an authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152 et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost," as applied to a stormwater control system or a water or waste system, includes the purchase price of the system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority; the cost of improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; any deposit to any bond interest and principal reserve account, start-up costs and reserves and expenditures for operating capital; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement, or construction; administrative expenses and such other expenses as may be necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or construction of any such system and the placing of the system in operation by the authority. Any obligation or expense incurred by an authority in connection with any of the foregoing items of cost and any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system is a part of the cost of such system.

"Cost of improvements" means the cost of constructing improvements and includes the cost of all labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired which are deemed necessary for such construction; interest during any period of disuse during such construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal expenses, plans, specifications; and such other expenses as may be necessary or incident to such construction.

"Federal agency" means the United States of America or any department, agency, instrumentality, or bureau thereof.

"Improvements" means such repairs, replacements, additions, extensions and betterments of and to a stormwater control system or a water or waste system as an authority deems necessary to place or maintain the system in proper condition for the safe, efficient and economical operation thereof or to provide service in areas not currently receiving such service.

"Owner" includes persons, federal agencies, and units of the Commonwealth having any title or interest in any stormwater control system or a water or waste system, or the services or facilities to be rendered thereby.

"Political subdivision" means a locality or any institution or commission of the Commonwealth of Virginia.

"Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved

materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the ~~State Water Control Board~~*Department of Environmental Quality*, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954 (42 U.S.C. § 20011, et seq.), as amended.

"Refuse collection and disposal system" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and equipment for use in connection therewith.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water and household and industrial wastes as may be present.

"Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

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

"Stormwater control system" means a structural system of any type that is designed to manage the runoff from land development projects or natural systems designated for such purposes, including, without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating stations, and other plants, structures, and real and personal property used for support of the system.

"Unit" means any department, institution or commission of the Commonwealth; any public corporate instrumentality thereof; any district; or any locality.

"Water or waste system" means any water system, sewer system, sewage disposal system, or refuse collection and disposal system, or any combination of such systems. "Water system" means all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, or facilities incident thereto, and any integral part thereof, including water supply systems, water distribution systems, dams and facilities for the generation or transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances, and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof but not including dams or facilities for the generation or transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water.

§ 21-122.1. Bonds for special purpose; no election required.

The governing body of any county in which a sanitary district has been or may be created by general or special law shall have the power to issue bonds to satisfy improvements to water or sewerage systems mandated by the ~~State Water Control Board~~*Department of Environmental Quality*, pursuant to the Federal Water Pollution Control Act, as amended (P.L. 92-500).

The principal and interest on bonds issued under this section shall be paid by the governing body exclusively from revenues and receipts from the water or sewerage system which is to be improved.

For the purposes of this section, the term "mandated" shall also mean any agreement between a governing body and the ~~State Water Control Board~~*Virginia Board of Environmental Quality or the Director of the Department of Environmental Quality* to come into compliance with the requirements of the State Water Control Law.

Issuance of such bonds shall be subject to the conditions or limitations of this article; however, no bond referendum shall be required for bonds to be issued pursuant to this section. The sections of this article pertaining to election requirements and procedures shall not be applicable where bonds are to be issued for the purposes set forth herein. In addition, the provisions of §§ 21-137.2 and 21-138, authorizing an annual tax to be levied upon all the property in the district in order to pay the principal and interest due on the bonds, shall not be applicable to bonds issued under this section.

All bonds issued under the provisions of this section shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any county, city, town or other subdivision of the Commonwealth are pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this section shall not directly or indirectly or contingently obligate the Commonwealth or any county, city, town or other subdivision of the Commonwealth to levy any taxes whatever therefor or to make any appropriation for their payment except from the funds pledged under the provisions of this section.

§ 28.2-638. Authority of Governor to authorize dredging of channel in navigable waters.

When the approval, consent, or authorization of the Commonwealth is necessary or expedient for any

person to dredge a channel of any navigable stream, the bed of which is owned by the Commonwealth, for the purpose of deepening, widening, or relocating such channel and making related improvements, the Governor may, on behalf of the Commonwealth, grant such approval upon such terms and conditions as he deems appropriate after the receipt of advisory reports from the Virginia Institute of Marine Science, the ~~State Water Control Board~~*Department of Environmental Quality*, the Commission, the Board of Game and Inland Fisheries, the Director of the Department of Conservation and Recreation, the Director of the Department of Historic Resources, the State Port Authority, and the Commonwealth Transportation Board.

§ 28.2-1100. Virginia Institute of Marine Science continued; duties.

The Virginia Institute of Marine Science shall hereafter be referred to as the Institute. The Institute shall:

1. Conduct studies and investigations of the seafood and commercial fishing and sport fishing industries;

2. Consider ways to conserve, develop and replenish fisheries resources and advise the Marine Resources Commission and other agencies and private groups on these matters;

3. Conduct studies of problems pertaining to the other segments of the maritime economy;

4. Conduct studies of marine pollution in cooperation with the ~~State Water Control Board~~ *Department of Environmental Quality* and the Department of Health and make the data and their recommendations available to the appropriate agencies;

5. Conduct hydrographic and biological studies of the Chesapeake Bay, its tributaries, and all the tidal waters of the Commonwealth and the contiguous waters of the Atlantic Ocean;

6. Engage in research in the marine sciences;

7. Conduct such special studies and investigations concerning these subjects as requested by the Governor; and

8. Engage in research and provide training, technical assistance and advice to the Board of Conservation and Recreation on erosion along tidal shorelines, the Soil and Water Conservation Board on matters relating to tidal shoreline erosion, and to other agencies upon request.

These studies shall include consideration of the seafood and other marine resources, such as the waters, bottoms, shore lines, tidal wetlands, and beaches, and all matters related to marine waters and the means by which marine resources might be conserved, developed and replenished.

§ 28.2-1205. Permits for the use of state-owned bottomlands.

A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia. The Commission shall also consider the project's effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;

2. Marine and fisheries resources of the Commonwealth;

3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this title;

4. Adjacent or nearby properties;

5. Water quality; and

6. Submerged aquatic vegetation (SAV).

B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine Science, the ~~State Water Control Board~~*Department of Environmental Quality*, the Virginia Department of Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit application relates to or affects the particular concerns or activities of those agencies.

C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Commission a plan for sewage treatment or disposal facilities that has been approved by the State Department of Health.

D. A permit is required and shall be issued by the Commission for placement of any private pier measuring 100 or more feet in length from the mean low-water mark, which is used for noncommercial purposes by an owner of the riparian land in the waters opposite the land, and that traverses commercially productive leased oyster or clam grounds, as defined in § 28.2-630, provided that the pier does not extend beyond the navigation line established by the Commission or the United States Army Corps of Engineers. The permit may reasonably prescribe the design and location of the pier for the sole purpose of minimizing the adverse impact on such oyster or clam grounds or the harvesting or

propagation of oysters or clams therefrom. The permit shall contain no other conditions or requirements. Unless information or circumstances materially alter the conditions under which the permit would be issued, the Commission shall act within 90 days of receipt of a complete joint permit application to approve or deny the application. If the Commission fails to act within that time, the application shall be deemed approved and the applicant shall be notified of the deemed approval.

E. All permits issued by the Commission for the use of state-owned bottomlands pursuant to § 28.2-1204, or to recover underwater historic property shall be in writing and specify the conditions and terms that the Commission determines are appropriate, and royalties unless prohibited under other provisions of this chapter.

F. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). However, any decision made by the Commission hereunder consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 shall not be deemed to have been made pursuant to the police power. No person shall reapply for the same or substantially similar use of the bottomlands within 12 months of the denial of a permit by the Commission. Nothing in this subsection shall be construed to deprive a riparian landowner of such rights as he may have under common law.

§ 28.2-1205.1. Coordinated review of water resources projects.

A. Applications for water resources projects that require a Virginia Marine Resources permit and an individual Virginia Water Protection Permit under § 62.1-44.15:5 shall be submitted and processed through a joint application and review process.

B. The Commissioner and the Director of the Department of Environmental Quality, in consultation with the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Commission and the Department of Environmental Quality; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments, within 45 days of project notification by the Commission and the Department of Environmental Quality; (iii) the Commission and the ~~State Water Control Board~~*Department of Environmental Quality* shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the Commission and the ~~State Water Control Board~~*Department of Environmental Quality* shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Commission and the ~~State Water Control Board~~*Department of Environmental Quality* shall provide each other with notification of its action and any and all supporting information, including any background materials or exhibits used in the application.

§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance.

Any county, city or town may adopt the following ordinance, which, after October 1, 1992, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county, city, or town which has adopted the ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992.

Wetlands Zoning Ordinance

§ 1. The governing body of ....., acting pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of wetlands.

§ 2. As used in this ordinance, unless the context requires a different meaning:

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Governmental activity" means any of the services provided by this ..... (county, city, or town) to its citizens for the purpose of maintaining this ..... (county, city, or town), including but not limited to such services as constructing, repairing and maintaining roads; providing sewage facilities and street lights; supplying and treating water; and constructing public buildings.

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia spp.), sea lavender (Limonium spp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile edentula), southern wildrice (Zizaniopsis miliacea), cattail (Typha spp.), three-square (Scirpus spp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), smartweed (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattail (Typha spp.), three-square (Scirpus spp.), dock (Rumex sp.), smartweed (Polygonum sp.), yellow pond lily (Nuphar sp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of Virginia.

§ 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

2. The cultivation and harvesting of shellfish, and worms for bait;

3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subdivision 1 of this section;

4. Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;

5. Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;

6. Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

7. The construction or maintenance of aids to navigation which are authorized by governmental authority;

8. Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

9. The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

10. Governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision thereof; and

11. The normal maintenance of manmade drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize the construction of any drainage ditch.

§ 4. A. Any person who desires to use or develop any wetland within this ..... (county, city, or town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first file an application for a permit directly with the wetlands board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved.

§ 5. All applications, maps, and documents submitted shall be open for public inspection at the office designated by the applicable governing body and specified in the advertisement for public hearing required under § 6 of this ordinance.

§ 6. Not later than sixty days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the ~~Water Control Board~~*Department of Environmental Quality*, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this ..... (county, city, or town). The published notice shall specify the place or places within this ..... (county, city, or town) where copies of the application may be examined. The costs of publication shall be paid by the applicant.

§ 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within thirty days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination within the thirty-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under § 5 of this ordinance.

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and

limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation.

§ 10. A. In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

1. The testimony of any person in support of or in opposition to the permit application;

2. The impact of the proposed development on the public health, safety, and welfare; and

3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

§ 11. The permit shall be in writing, signed by the chairman of the board or his authorized representative, and notarized. A copy of the permit shall be transmitted to the Commissioner.

§ 12. No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

§ 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land use ordinances of this ..... (county, city, or town) or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

§ 28.2-1403. Certain counties, cities and towns authorized to adopt coastal primary sand dune ordinance.

Any of the following counties, cities and towns which adopt a wetlands zoning ordinance pursuant to § 28.2-1302 may adopt the coastal primary sand dune zoning ordinance which is set out in this section: the Counties of Accomack, Lancaster, Mathews, Northampton and Northumberland and the Cities of Hampton, Norfolk, and Virginia Beach; and the Town of Cape Charles. In the event that a locality has not adopted a wetlands zoning ordinance pursuant to Chapter 13 (§ 28.2-1300 et seq.) or repeals it if already adopted, such locality may adopt or continue to administer the ordinance contained herein provided the locality appoints a wetlands board following the procedure specified in § 28.2-1303. Any county or city which has adopted the Coastal Primary Sand Dune Zoning Ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992. The following ordinance is the only coastal primary sand dune zoning ordinance under which any board shall operate after October 1, 1992.

Coastal Primary Sand Dune Zoning Ordinance

§ 1. The governing body of ....., acting pursuant to Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches.

§ 2. As used in this ordinance, unless the context requires a different meaning:

"Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable manmade structure, such as a bulkhead, revetment, or paved road.

"Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (Ammophilla breviligulata); beach heather (Hudsonia tometosa); dune bean (Strophostylis spp.); dusty miller (Artemisia stelleriana); saltmeadow hay (Spartina patens); seabeach

sandwort (Arenaria peploides); sea oats (Uniola paniculata); sea rocket (Cakile edentula); seaside goldenrod (Solidago sempervirens); and short dune grass (Panicum ararum). For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"County, city and town" means the governing body of the county, city and town.

"Governmental activity" means any of the services provided by the Commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing, and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

"Wetlands board" or "board" means the board created pursuant to § 28.2-1303 of the Code of Virginia.

§ 3. The following uses of and activities in dunes are authorized if otherwise permitted by law:

1. The construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;

2. The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;

3. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

4. The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;

5. Sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;

6. The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;

7. The normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the United States, this Commonwealth or any of its counties or cities, or of any person, provided no coastal primary sand dunes are altered;

8. Outdoor recreational activities, provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;

9. The conservation and research activities of the Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;

10. The construction and maintenance of aids to navigation which are authorized by governmental authority;

11. Activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health and safety; and

12. Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof.

§ 4. A. Any person who desires to use or alter any coastal primary sand dune within this ..... (county, city or town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first file an application directly with the wetlands board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under this ordinance and Chapter 13 (§ 28.2-1300 et seq.) of

Title 28.2 of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this ordinance.

§ 5. All applications, maps, and documents submitted shall be open for public inspection at the office of the recording officer of this ..... (county, city or town).

§ 6. Not later than sixty days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the ~~State Water Control Board~~*Department of Environmental Quality*, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this ..... (county, city or town). The costs of publication shall be paid by the applicant.

§ 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within thirty days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination within the thirty-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this ..... (county, city or town).

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.

§ 10. A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:

1. The testimony of any person in support of or in opposition to the permit application;

2. The impact of the proposed development on the public health, safety, and welfare; and

3. The proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

§ 11. The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the Commissioner.

§ 12. No permit shall be granted without an expiration date established by the board. Upon proper

application, the board may extend the permit expiration date.

§ 13. No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

§ 29.1-214. Duties of the Department of Environmental Quality with respect to water samples.

Upon the receipt of any water sample sent under § 29.1-213, the ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall have a chemical analysis of the sample made by a chemist employed by the ~~State Water Control Board~~ *Department of Environmental Quality* or retained especially for that purpose. If the results of the analysis show that the sample of water was polluted, the ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall initiate further studies and analyses to determine the nature, extent and most effective measures of control of the pollution.

The ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall then proceed as provided in Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

§ 32.1-163. Definitions.

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

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the ~~State Water Control Board~~*Department of Environmental Quality* pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Authorized onsite soil evaluator" means a person possessing the qualifications specified by the Board who has successfully completed the course and testing to be authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for traditional onsite sewage disposal systems.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Transportation" means the vehicular conveyance of sewage.

"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, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

§ 32.1-164. Powers and duties of Board; regulations; fees; authorized onsite soil evaluators; letters in lieu of permits.

A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems, and treatment works as they affect the public health and welfare. In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the ~~State Water Control Board~~*Director of the Department of Environmental Quality*, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations ~~of the State Water Control Board~~ and be registered with the ~~State Water Control Board~~*Department of Environmental Quality*.

In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall require and the Department shall conduct regular inspections of alternative discharging sewage systems. The Board shall also establish requirements for maintenance contracts for alternative

discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an alternative discharging sewage system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit issued by the ~~State Water Control Board~~*Department of Environmental Quality*.

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

2. Criteria for the granting or denial of such permits.

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works for permits issued by the Commissioner.

4. Standards governing disposal of sewage on or in soils.

5. Standards specifying the minimum distance between sewerage systems or treatment works and:

(a) Public and private wells supplying water for human consumption,

(b) Lakes and other impounded waters,

(c) Streams and rivers,

(d) Shellfish waters,

(e) Ground waters,

(f) Areas and places of human habitation,

(g) Property lines.

6. Standards as to the adequacy of an approved water supply.

7. Standards governing the transportation of sewage.

8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.

9. A requirement that such residences, buildings, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.

11. Standards for inspections of and requirements for maintenance contracts for alternative discharging sewage systems.

12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.

13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage systems.

14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system permits.

15. Criteria for approved training courses, testing requirements, and application fees for persons wishing to be authorized onsite soil evaluators.

16. Procedures for listing, removing from the list, and reinstating on the list those persons who have successfully qualified to be authorized onsite soil evaluators.

C. A fee of $75 shall be charged for filing an application for an onsite sewage disposal system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. However, $10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage disposal system. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and

disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Further a fee of $75 shall be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this section. However, $10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the ~~State Water Control Board~~*Virginia Board of Environmental Quality* relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or any special final order of the ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent may initiate a civil action against any user or users of an alternative discharging sewage system to recover that portion of any civil penalty imposed against the owner which directly resulted from violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

G. The Board shall establish a program for qualifying individuals as authorized onsite soil evaluators. The Board's program shall include, but not be limited to, approved training courses, written and field tests, application fees to cover the costs of the program, renewal fees and schedules, and procedures for listing, removing from the list, and reinstating individuals as authorized onsite soil evaluators. To contain costs, the Board shall use or enhance the written and field tests given to Department of Health sanitarians as the testing vehicle for authorized onsite soil evaluators. Until July 1, 2001, a person holding a certificate as a Virginia certified professional soil scientist from the Board of Professional Soil Scientists shall be deemed to be qualified, upon application and demonstration of the knowledge, skills, and abilities necessary to conduct onsite soil evaluations, as an authorized onsite soil evaluator without completing the Board's training courses and taking the written and field tests. The Board shall furnish the list of authorized onsite soil evaluators to all local and district health departments.

H. The Board shall establish and implement procedures for issuance of letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. Such letters shall state, in language determined by the Office of the Attorney General and approved by the Board, the appropriateness of the soil for a traditional septic or other onsite sewage system; no system design shall be required for issuance of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the septic or other onsite sewage system is to be located so as to be a binding notice to the public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial, intervening change in the soil or site conditions where the septic system or other onsite sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations from authorized onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the Board's established procedures for issuance of letters. The Department shall issue such letters within 20 working days of the application filing date when evaluations produced by authorized onsite soil evaluators are submitted as supporting documentation. The Department shall not be required to do a field check of the evaluation prior to issuing such a letter or a permit based on such letter; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment. Applicants for such letters in lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and, upon application for a septic system permit or other onsite sewage system permit, shall pay the permit application fee.

§ 32.1-164.3. Septage disposal.

Notwithstanding the provisions of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, the Board of Health shall have the authority to issue permits which prescribe the terms and conditions upon which septage may be disposed of by land application. Application for disposal permits shall be submitted in form and content which are satisfactory to the Board. Upon receipt of a satisfactory application, the Board shall send a copy to the ~~State Water Control Board~~ *Director of the Department of Environmental Quality* and comply with the provisions of § 32.1-164.2. ~~The State Water Control Board~~*The Director of the Department of Environmental Quality* shall review the application without delay and advise the Board within sixty days of the requirements necessary to protect state waters. The Board shall not consider the

application complete until comments have been received from the ~~State Water Control Board~~*Director of the Department of Environmental Quality*. The Board shall approve or disapprove the application and issue the permit as appropriate. If the application is disapproved the Board shall advise the applicant of the conditions necessary to obtain approval. The Board may summarily revoke or amend the permit if it determines that the septage disposal is adversely affecting public health or if the ~~State Water Control Board~~*Director of the Department of Environmental Quality* notifies the Board that state waters are being adversely affected.

§ 32.1-164.5. Land application, marketing and distribution of sewage sludge; regulations; notice requirement; permit.

A. 1. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the ~~State Water Control Board~~*Department of Environmental Quality* or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge by the State Health Commissioner, under a permit issued pursuant to § 32.1-164.3. Any person who engages in such activity shall be subject to the penalties provided in § 32.1-27. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The State Health Commissioner may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

B. The Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation, shall promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing or distribution is properly treated or stabilized; (ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect public health and the environment; and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, will be prevented.

C. Regulations promulgated by the Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits as required by this section;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;

5. Required procedures for land application, marketing and distribution of sewage sludge;

6. Requirements for sampling, analysis, record keeping and reporting in connection with land application, marketing and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 32.1-164.2 and 62.1-44.15:3;

8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land applied, and requirements for approval of nutrient management plans by the Department of Conservation and Recreation prior to permit issuance under specific conditions, including but not limited to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, and sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate; and

9. Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the State Department of Health and to the local governing body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the current and preceding calendar year, which shall include information detailing each complaint and how it was resolved.

D. Where, because of site-specific conditions identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application and time of day restrictions exceeding those required by the regulations promulgated under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions. Should the permit applicant object to the inclusion of any such condition, the approval of the Commissioner shall be required before the condition objected to may be included in the permit.

E. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected hereunder shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be $5,000. The fee for the reissuance, amendment or modification of a permit for an existing site shall not exceed $1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department.

F. There is hereby established in the treasury a special fund to be known as the Sludge Management Fund, hereinafter referred to as the fund. The fees required by this section shall be transmitted to the Comptroller to be deposited into the fund. The income and principal of the fund shall be used only and exclusively for the Department's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage sludge, as well as the administration and management of the Department's sewage sludge land application program. The State Treasurer shall be the custodian of the moneys deposited in the fund. No part of the fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

G. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Department written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury and property damages resulting from the transportation, storage or land application of sewage sludge. The Board of Health shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.

H. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a certified laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

I. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

J. The Board and the Department, in consultation with the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, Virginia Polytechnic Institute and State University, and the Virginia Agricultural Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to § 62.1-44.19:3, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures, (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subdivision

H 3 of § 62.1-44.19:3. To the extent feasible, the program shall emphasize in-field instruction and practical training. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and providing facilities and instructors for the program. The fee shall be reimbursable from the fund established pursuant to § 62.1-44.19:3; and

2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

K. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

L. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection D, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

§ 32.1-176.7. Other agencies to cooperate with Department.

The Department of Housing and Community Development and the ~~State Water Control Board~~*Department of Environmental Quality* shall cooperate fully and promptly with the Department of Health in the administration of this article.

§ 32.1-233. Radiation Advisory Board; composition; duties generally.

A. The Radiation Advisory Board shall consist of ten appointive members and the seven ex officio members specified below. The Governor shall appoint to the Advisory Board individuals from industry, labor and agriculture as well as individuals with scientific training in one or more of the following fields: radiology, medicine, radiation or health physics, or related sciences, with specialization in ionizing radiation. Not more than two individuals shall be specialists in any one of the above-named fields. Members of the Advisory Board shall serve at the pleasure of the Governor. The Commissioner shall be an ex officio member and chairman of the Advisory Board, and the Commissioner of Labor and Industry, the Commissioner of Agriculture and Consumer Services, the ~~chairman of the State Water Control Board~~*Director of the Department of Environmental Quality* or his designee, the Governor's representative on the Southern Interstate Nuclear Board, ~~the Executive Director of the Department of Waste Management~~ *the chairman of the Virginia Environmental Quality Board or his designee,* and the Director of the Virginia Institute of Marine Science shall be ex officio members of the Advisory Board.

B. The Advisory Board shall meet at least annually and shall:

1. Review and evaluate policies and programs of the Commonwealth relating to ionizing radiation; and

2. Make recommendations to the Commissioner and the Board of Health~~,~~ *and* the ~~Executive Director of the Department of Waste Management and the Virginia Waste Management Board~~*Director of the Department of Environmental Quality* and furnish such technical advice as may be required, on matters relating to development, utilization and regulation of sources of ionizing radiation.

§ 36-99.6. Underground and aboveground storage tank inspections.

A. The Board of Housing and Community Development shall incorporate, as part of the Building Code, regulations adopted and promulgated by the ~~State Water Control Board~~*Virginia Board of Environmental Quality* governing the installation, repair, upgrade and closure of underground and aboveground storage tanks.

B. Inspections undertaken pursuant to such Building Code regulations shall be done by employees of the local building department or another individual authorized by the local building department.

§ 44-146.30. Department of Emergency Management to monitor transportation of hazardous radioactive materials.

The Coordinator of the Department of Emergency Management, pursuant to regulations promulgated by the ~~Virginia Waste Management Board~~*Virginia Board of Environmental Quality*, will maintain a register of shippers of hazardous radioactive materials and monitor the transportation within the Commonwealth of those hazardous radioactive materials, as defined by the ~~Virginia Waste Management Board~~*Virginia Board of Environmental Quality*, which may constitute a significant potential danger to the citizens of the Commonwealth in the event of accidental spillage or release. The regulations promulgated by the Board shall not be in conflict with federal statutes, rules, or regulations. Other agencies and commissions of the Commonwealth shall cooperate with the ~~Virginia Waste Management Board~~*Virginia Board of Environmental Quality* in the formulation of regulations as herein

provided.

§ 45.1-179.2. Definitions.

The following terms used in this chapter have the meanings respectively ascribed thereto unless the context clearly requires otherwise:

"Correlative rights" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system;

"Geothermal energy" means the usable energy produced or which can be produced from geothermal resources;

"Geothermal resource" means the natural heat of the earth and the energy in whatever form, present in, associated with, created by, or which may be extracted from, that natural heat, as determined by the rules and regulations of the Department;

"Geothermal system" means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources; and

~~"Board" means the State Water Control Board.~~

§ 45.1-179.7. Additional powers of Department.

The Department shall:

1. Consult with the ~~Board~~*Director of the Department of Environmental Quality* in carrying out all of its duties and responsibilities pursuant to the provisions of this chapter;

2. Develop a comprehensive geothermal permitting system for the Commonwealth, which shall provide for the exploration and development of geothermal resources;

3. Promulgate such rules and regulations as may be necessary to provide for geothermal drilling and the exploration and development of geothermal resources in the Commonwealth; such rules and regulations shall be based on a system of correlative rights;

4. Establish minimum temperature levels and volumetric rates in order to determine Department jurisdiction over geothermal resource development. In establishing such temperature levels (i) the Department shall set minimum temperature levels for permitting, well regulations, reservoir management, and allocation of the geothermal resource; and (ii) the Department shall set minimum volumetric rates for geothermal leasing, royalties and severance taxes, as necessary. The Department shall also be responsible for reviewing the established temperature level and volumetric rate requirements biennially and revising the figures as necessary. Revision of temperature levels or volumetric rate requirements shall not occur more often than every two years and such revision shall not operate retroactively; and

5. Consult with the State Department of Health, as necessary, to protect potable waters of the Commonwealth and in carrying out its duties and responsibilities pursuant to the provisions of this chapter.

§ 45.1-179.8. Reinjection policy.

The Department, the ~~Board~~*Director of the Department of Environmental Quality,* and Department of Health shall jointly develop, and revise as necessary, a policy on reinjection of spent geothermal fluids. Such policy shall refer to the reinjection into the ground of waters extracted from the earth in the process of geothermal development, production, or utilization.

§ 45.1-179.9. Cancellation or suspension of permit.

Whenever, after a public hearing held in conjunction with the ~~Board~~*Director of the Department of Environmental Quality*, the Department determines that a holder of a permit issued pursuant to the provisions of this chapter is willfully violating any provision of such permit or any provision of this chapter, the Department may cancel or suspend such permit for cause or impose limitations on the future use thereof in order to prevent future violations.

§ 45.1-254. National pollutant discharge elimination system permits.

A. Upon request of the Director, the ~~State Water Control Board~~*Department of Environmental Quality* may delegate to the Director its authority, under the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 to issue, amend, revoke and enforce national pollutant discharge elimination system permits for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations. Upon receiving such delegation, the authority to issue, amend, revoke and enforce national pollutant discharge elimination system permits under the State Water Control Law for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations, to the extent required under the federal Clean Water Act, P.L. 92-500, as amended, shall be vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided herein. For the purpose of enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to permits, orders and regulations issued by the Director in accordance with this section.

B. After having received delegation of authority pursuant to subsection A of this section, the Director shall transmit to the ~~State Water Control Board~~*Department of Environmental Quality* a copy of each application for a national pollutant discharge elimination system permit received by the Director, and provide written notice to the ~~State Water Control Board~~*Department of Environmental Quality* of every action related to the consideration of such permit application.

C. No national pollutant elimination system permit shall be issued if, within thirty days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system permit, the ~~State Water Control Board~~*Department of Environmental Quality* objects in writing to the issuance of such permit. Whenever the ~~State Water Control Board~~*Department of Environmental Quality* objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the ~~State Water Control Board~~*Department of Environmental Quality*.

D. An applicant who is aggrieved by an objection made under subsection C of this section shall have the right to a hearing before the ~~State Water Control Board~~*Department of Environmental Quality* pursuant to § 62.1-44.25. If the ~~State Water Control Board~~*Department of Environmental Quality* withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the ~~State Water Control Board~~*Department of Environmental Quality* made pursuant to this subsection, shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Whenever, on the basis of any information available to it, the ~~State Water Control Board~~ *Department of Environmental Quality* finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system permit issued by the Director, it shall notify the person in alleged violation and the Director. If beyond the thirtieth day after notification by the ~~State Water Control Board~~*Department of Environmental Quality,* the Director has not commenced appropriate enforcement action, the ~~State Water Control Board~~*Department of Environmental Quality* may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23 and 62.1-44.32.

F. The Director shall promulgate such regulations as he deems necessary for the issuance, administration, monitoring and enforcement of national pollutant discharge elimination system permits for coal surface mining operations.

G. For the purpose of this section, the terms "sewage," "industrial wastes" and "other wastes" shall have the meanings ascribed to them in § 62.1-44.3.

§ 45.1-361.27. Duties, responsibilities and authority of the Director.

A. The Director shall promulgate and enforce rules, regulations and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth. Such rules, regulations and orders shall be designed to:

1. Prevent pollution of state waters and require compliance with the Water Quality Standards adopted by the ~~State Water Control Board~~*Virginia Board of Environmental Quality*;

2. Protect against off-site disturbances from gas, oil, or geophysical operations;

3. Ensure the restoration of all sites disturbed by gas, oil, or geophysical operations;

4. Prevent the escape of the Commonwealth's gas and oil resources;

5. Provide for safety in coal and mineral mining and coalbed methane well and related facility operations;

6. Control wastes from gas, oil, or geophysical operations;

7. Provide for the accurate measurement of gas and oil production and delivery to the first point of sale; and

8. Protect the public safety and general welfare.

B. In promulgating rules and regulations, and when issuing orders for the enforcement of the provisions of this article, the Director shall consider the following factors:

1. The protection of the citizens and environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil;

2. The means of ensuring the safe recovery of coal and other minerals without substantially affecting the right of coal, minerals, gas, oil, or geophysical operators to explore for and produce coal, minerals, gas, or oil; and

3. The protection of safety and health on permitted sites for coalbed methane wells and related facilities.

C. In promulgating rules, regulations and orders, the Director shall be authorized to set and enforce standards governing the following: gas or oil ground-disturbing geophysical exploration; the development, drilling, casing, equipping, operating and plugging of gas or oil production, storage, enhanced recovery, or disposal wells; the development, operation and restoration of site disturbances for wells, gathering pipelines and associated facilities; and gathering pipeline safety.

D. Whenever the Director determines that an emergency exists, he shall issue an emergency order without advance notice or hearing. Such orders shall have the same validity as orders issued with advance notice and hearing, but shall remain in force no longer than thirty days from their effective date. After issuing an emergency order, the Director shall promptly notify the public of the order by publication and hold a public hearing for the purposes of modifying, repealing or making permanent the

emergency order. Emergency orders shall prevail as against general regulations or orders when in conflict therewith. Emergency orders shall apply to gas, oil, or geophysical operations and to particular fields, geographical areas, subject areas, subject matter or situations.

E. The Director shall also have the authority to:

1. Issue, condition and revoke permits;

2. Issue notices of violation and orders upon violations of any provision of this chapter or regulation adopted thereunder;

3. Issue closure orders in cases of imminent danger to persons or damage to the environment or upon a history of violations;

4. Require or forfeit bonds or other financial securities;

5. Prescribe the nature of and form for the presentation of any information and documentation required by any provision of this article or regulation adopted thereunder;

6. Maintain suit in the city or county where a violation has occurred or is threatened, or wherever a person who has violated or threatens to violate any provision of this chapter may be found, in order to restrain the actual or threatened violation;

7. At reasonable times and under reasonable circumstances, enter upon any property and take such action as is necessary to administer and enforce the provisions of this chapter; and

8. Inspect and review all properties and records thereof as are necessary to administer and enforce the provisions of this chapter.

§ 46.2-1176. Definitions.

The following words and phrases when used in this article shall have the following meanings except where the context clearly indicates a different meaning:

"Basic, test and repair program" means a motor vehicle emissions inspection system established by regulations of the Board which shall designate the use of a BAR-90, designed so it may be upgraded in the future to an ASM 50-15 (acceleration simulation mode or method), as the only authorized testing equipment. Only those computer software programs and emissions testing procedures necessary to comply with the applicable provisions of Title I of the Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs.

"Board" means the ~~State Air Pollution Control Board~~*Virginia Board of Environmental Quality*.

"Certificate of emissions inspection" means a document, device, or symbol, prescribed by the Director and issued pursuant to this article, which indicates that (i) a motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this article; (ii) the requirement of compliance with such emissions standards has been waived; or (iii) the motor vehicle has failed such emissions inspection.

"Director" means the Director of the Department of Environmental Quality.

"Emissions inspection station" means any facility or portion of a facility that has obtained an emissions inspection station permit from the Director authorizing the facility to perform emissions inspections in accordance with this article.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection system established by regulations of the Board that shall designate the use of the ASM 50-15 (acceleration simulation mode or method) as the only authorized testing equipment. Only those computer software programs and emissions testing procedures necessary to comply with applicable provisions of Title I of the Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the Director.

"Motor vehicle" means any vehicle that:

1. Is designed for the transportation of persons or property; and

2. Is powered by an internal combustion engine.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Qualified hybrid motor vehicle" means a motor vehicle that (i) meets or exceeds all applicable regulatory requirements, (ii) meets or exceeds the applicable federal motor vehicle emissions standards for gasoline-powered passenger cars, and (iii) can draw propulsion energy both from gasoline or diesel fuel and a rechargeable energy storage system.

"Referee station" means an inspection facility operated or used by the Department of Environmental Quality (i) to determine program effectiveness, (ii) to resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) to provide such other technical support and information, as appropriate, to emissions inspection stations and vehicle owners.

"Remote sensing" means the measurement of motor vehicle emissions through electronic or light-sensing equipment from a remote location such as the roadside. Remote sensing equipment may include devices to detect and record the vehicle's registration or other identification numbers.

"Test and repair" means motor vehicle emissions inspection facilities that perform official motor vehicle emissions inspections and may also perform vehicle repairs. No regulation of the Board pertaining to test and repair shall bar inspection facilities from also performing vehicle repairs.

§ 46.2-1178.1. On-road testing of motor vehicle emissions; authority to adopt regulations; civil charges.

A. The emissions inspection program authorized by § 46.2-1177 and provided for in § 46.2-1178 shall include on-road testing of motor vehicle emissions. The Board may promulgate regulations establishing on-road testing requirements including, but not limited to, collecting of data and information necessary to comply with the federal Clean Air Act Amendments of 1990, random testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards adopted by the Board.

B. If an emissions test performed pursuant to this section indicates that a motor vehicle does not meet emissions standards established by the Board, the ~~Board~~*Director* may collect from the owner of the vehicle a civil charge based on actual emissions. The Board shall establish a schedule of civil charges to be collected pursuant to this section. Such civil penalties shall not exceed $450 using 1990 as the base year and adjusted annually by the Consumer Price Index. The schedule of charges and their assessment shall be established by regulations promulgated to be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Civil charges assessed pursuant to this section shall be waived by the ~~Board~~*Director* if, within thirty calendar days of notice of the violation, the vehicle's owner provides proof that the vehicle (i) since the date of the violation, has passed a vehicle emissions test as provided in § 46.2-1178, (ii) qualifies for an emissions inspection waiver as provided in § 46.2-1181, or (iii) has qualified for an emissions inspection waiver as provided in § 46.2-1181 within the twelve months prior to the violation.

D. Civil charges collected pursuant to this section shall be paid into the state treasury and deposited by the State Treasurer into the Vehicle Emissions Inspection Program Fund pursuant to § 46.2-1182.2.

E. If on-road testing indicates that a motor vehicle does not exceed emissions standards adopted by the Board for on-road testing pursuant to § 46.2-1179, such testing may be considered proof of compliance for the purposes of § 46.2-1183 and may be considered to satisfy the requirements of § 46.2-1177 for a biennial inspection. The Board shall establish criteria under which such testing shall satisfy the requirements of § 46.2-1183.

§ 46.2-1179.1. Board to adopt clean alternative fuel fleet standards for motor vehicles; penalty.

A. For purposes of this section:

"Clean alternative fuel" means any fuel, including methanol, ethanol, other alcohols, reformulated gasoline, diesel, natural gases, liquified petroleum gas, hydrogen, and electricity or other power source used in a clean fuel vehicle that complies with the standards applicable to such vehicle under the federal Clean Air Act when using such fuel or other power source. In the case of a flexible fuel vehicle or dual fuel vehicle, "clean alternative fuel" means only a fuel for which the vehicle was certified when operating on clean alternative fuel.

"Fleet" means any centrally fueled fleet of ten or more motor vehicles owned or operated by a single entity. "Fleet" does not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers, motor vehicles used for manufacturer product tests, law-enforcement and other emergency vehicles, or nonroad vehicles, including farm and construction vehicles.

B. The Board may adopt by regulation motor vehicle clean alternative fuel fleet standards consistent with the provisions of Part C of Title II of the federal Clean Air Act for model years beginning with the model year 1998 or the first succeeding model year for which adoption of such standards is practicable. If adoption ~~and~~ ~~implementation~~ by the Board of an equivalent air pollution reduction program is approved by the federal Environmental Protection Agency, the regulation and program authorized by this section shall not become effective. Such regulations shall contain the minimum phase-in schedule contained in § 246 (b) of Part C of Title II of the Clean Air Act. However, nothing in this section shall preclude affected fleet owners from exceeding the minimum requirements of the federal Clean Air Act. Beginning in 1995 and upon adoption of the standards by the Board, the Board shall require the fleet owned by the federal government to meet the clean alternative fuel fleet standard and phase-in schedule established by the Board. If necessary to meet the Board's standards and phase-in schedule, the Board shall require fleets owned by the federal government to convert a portion of existing fleet vehicles to the use of clean alternative fuels as defined by the federal Clean Air Act. The standards specified in this subsection shall apply only to (i) motor vehicles registered in localities designated by the federal Environmental Protection Agency, pursuant to the federal Clean Air Act, as serious, severe, or extreme air quality nonattainment areas, or as maintenance areas formerly designated serious, severe, or extreme and (ii) motor vehicles not registered in the above-mentioned localities, but having either (a) a base of operations or (b) a majority of their annual travel in one or more of those localities.

C. An owner of a covered fleet shall not use any motor vehicle or motor vehicle engine which is manufactured during or after the first model year to which the standards specified in subsection A of this section are applicable, if such vehicle or engine is registered or has its base of operations in the localities specified in subsection B of this section and has not been certified in accordance with regulations promulgated by the Board. The Board may promulgate regulations providing for reasonable exemptions consistent with the provisions of Part C of Title II of the federal Clean Air Act. Motor vehicles exempted from the provisions of this section shall forever be exempt.

D. Any person that violates the requirements of this section or any regulation adopted hereunder shall be subject to the penalties in §§ 46.2-1187 and 46.2-1187.2. Each day of violation shall be a separate offense, and each motor vehicle shall be treated separately in assessing violations.

E. In order to limit adverse economic and administrative impacts on covered fleets operating both in Virginia and in neighboring states, the Department of Environmental Quality shall, to the maximum extent practicable, coordinate the provisions of its regulations promulgated under this section with neighboring states' statutes and regulations relating to use of clean alternative fuels by motor vehicle fleets.

F. The State Corporation Commission, as to matters within its jurisdiction, and the Department of Environmental Quality *or the Virginia Board of Environmental Quality*, as to other matters, may, should they deem such action necessary, promulgate regulations necessary or convenient to ensure the availability of clean alternative fuels to operators of fleets covered by the provisions of this section. ~~The State Air Pollution Control Board~~*The Director of the Department of Environmental Quality* may delegate to the Commissioner of Agriculture its authority under the Air Pollution Control Law of Virginia, Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, to implement and enforce any provisions of ~~its~~ regulations covering the availability of clean alternative fuels. Upon receiving such delegation, the authority to implement and enforce the regulations under the Air Pollution Control Law of Virginia shall be vested solely in the Commissioner, notwithstanding any provision of law contained in Title 10.1, except as provided in this section. The ~~State Air Pollution Control Board~~*Director of the Department of Environmental Quality*, in delegating its authority under this section, may make the delegation subject to any conditions ~~it~~ *he* deems appropriate to ensure effective implementation of the regulations ~~according to the policies of the State Air Pollution Control Board~~.

§ 46.2-1187.2. Compelling compliance with regulations and orders; penalty.

Any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation or order of the Board *or the Director* may be compelled to comply by injunction, mandamus, or other appropriate remedy.

Without limiting the remedies which may be obtained under the foregoing provisions of this section, any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation or order of the Board *or the Director* or any provision of this article, shall, in the discretion of the court, be subject to a civil penalty of no more than $25,000 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the emissions inspection station owner's business, the severity of the economic impact of the penalty on that business, and the seriousness of the violation. Such civil penalties may, in the discretion of the court, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used to abate environmental pollution in whatever manner the court, by order, may direct. However, where the emissions inspection station owner is the county, city, or town or an agent thereof, the court shall direct the penalty to be paid into the state treasury.

With the consent of the emissions inspection station owner who has violated or failed, neglected, or refused to obey any regulation or order of the Board *or Director* or any provision of this article, the ~~Board~~*Director* may, in any order issued by the ~~Board~~*Director* against such owner, provide for the payment of civil charges in specific sums, not to exceed the limit in the foregoing provisions of this section. Such civil charges shall be in lieu of any civil penalty which could be imposed under the foregoing provisions of this section.

Any penalty provided for in this section to which an emissions inspection station owner is subject shall apply to any emissions inspector or certified emissions repair mechanic employed by or at that station.

As to emissions inspection station owners, emissions inspectors, and certified emissions repair mechanics, minor violations as set forth in Board regulations may be punishable by letters of reprimand from the Department. Major violations as set forth in Board regulations may be punishable by probation, suspension and/or license or certificate revocation, depending on the nature and type of violation. Civil penalties may be imposed only for major types of violations.

The Board shall provide by regulation a process whereby emissions inspection station owners, emissions inspectors and certified emissions repair mechanics may appeal penalties for violations. Such regulations regarding the process to appeal penalties for violations shall provide that the appeal process

shall be handled by a person other than the Program Manager for the applicable emissions program or one of his regional employees.

§ 46.2-1304.1. Localities may regulate construction and parking of commercial motor vehicles used to transport municipal solid waste; penalty.

The governing body of any county, city, or town may by ordinance provide that:

1. No commercial motor vehicle used to transport municipal solid waste shall be parked anywhere within the county, city, or town, except at locations zoned or otherwise authorized for such use by applicable ordinance, special exception, or variance;

2. Any such commercial motor vehicle found parked at a nonauthorized location may be towed or removed from that location as provided in § 46.2-1231; and

3. The cargo compartment of every commercial motor vehicle that is used to transport municipal solid waste shall be so constructed so as to prevent the escape of municipal solid waste therefrom. Such ordinances shall exclude from their provisions vehicles owned or operated by persons transporting municipal solid waste from their residences to a permitted transfer or disposal facility.

No such ordinance shall impose, for any violation of any of its provisions, a penalty greater than provided for a traffic infraction as provided in § 46.2-113. Any such penalty shall be in addition to any vehicle towing and storage charges.

For the purposes of this section, "municipal solid waste" shall have the meaning prescribed by the ~~Virginia Waste Management Board~~*Virginia Board of Environmental Quality* by regulation (9VAC20-80-10).

For the purposes of this section and local ordinances adopted under this section, "commercial motor vehicle" shall have the meaning prescribed in § 46.2-341.4.

§ 54.1-505. Qualification for an asbestos contractor's license.

To qualify for an asbestos contractor's license, an applicant shall:

1. Except as provided in § 54.1-504, ensure that each of his employees or agents who will come into contact with asbestos or who will be responsible for an asbestos project is licensed as an asbestos supervisor or worker; and

2. Demonstrate to the satisfaction of the Board that the applicant and his employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Department of Labor and Industry, and the ~~State Air Pollution Control Board~~ *Virginia Board of Environmental Quality* covering any part of an asbestos project.

§ 54.1-2300. Definitions.

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

"Board" means the Board for Waterworks and Wastewater Works Operators.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, firm or company organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.

"Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.

"Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18, if so certified by the ~~State Water Control Board~~*Director of the Department of Environmental Quality*; and (iii) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the ~~State Water Control Board~~*Director of the Department of Environmental Quality*.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a waterworks unless certified by the Board to be such.

§ 54.1-2301. Board for Waterworks and Wastewater Works Operators; membership; terms; duties.

A. The Board for Waterworks and Wastewater Works Operators shall consist of seven members as follows: the Director of the Office of Water Programs of the State Department of Health, or his designee, the ~~Executive Director of the State Water Control Board~~*Director of the Department of*

Environmental Quality, or his designee, a currently employed waterworks operator having a valid license of the highest classification issued by the Board, a currently employed wastewater works operator having a valid license of the highest classification issued by the Board, a faculty member of a state university or college whose principal field of teaching is management or operation of waterworks or wastewater works, a representative of an owner of a waterworks, and a representative of an owner of a wastewater works. No owner shall be represented on the Board by more than one representative or employee operator. The term of Board members shall be four years.

B. The Board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

§ 55-182.2. Escheat of property with hazardous materials.

In addition to any other remedy provided by law, the ~~Virginia Waste Management Board, pursuant to its authority granted in § 10.1-1402, or the Department of Waste Management~~*Department of Environmental Quality*, shall have recourse against any prior owner or the estate of any prior owner for the costs of clean-up of escheated property in or upon which any hazardous material as defined in § 44-146.34 is found.

§ 56-586.1. Electric energy emergencies.

A. As used in this section, "electric energy emergency" means an unplanned interruption in the generation or transmission of electricity resulting from a hurricane, ice storm, windstorm, earthquake or similar natural phenomena, or from a criminal act affecting such generation or transmission, act of war or act of terrorism, which interruption is (i) of such severity that minimum levels of reliable service cannot be maintained using resources practicably obtainable from the market and (ii) so imminently and substantially threatening to the health, safety or welfare of residents of this Commonwealth that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

B. The Governor is authorized, after finding that an electric energy emergency exists and that appropriate federal and state agencies and appropriate reliability councils cannot adequately address such emergency, to declare an electric energy emergency by filing a written declaration with the Secretary of the Commonwealth. The declaration shall state the counties and cities or utility service areas of the Commonwealth in which the declaration is applicable, or its statewide application. A declared electric energy emergency shall go into immediate effect upon filing and continue in effect for the period prescribed in the declaration, but not more than thirty days. At the end of the prescribed period, the Governor may issue another declaration extending the emergency. The Governor shall terminate such declaration as soon as the basis for such declaration no longer exists.

C. During a declared electric energy emergency, the Governor is authorized, in compliance with guidelines of the Department of Emergency Services promulgated as provided in subsection G, to require any generator or any municipal electric utility that is capable of generating but (i) is not generating or (ii) is not generating at its full potential during such declared electric emergency, to generate, dispatch or sell electricity from a facility that it operates within the Commonwealth, to the Commonwealth for distribution within the areas of the Commonwealth designated in the declaration. The quantity of electricity required to be generated, dispatched or sold, and the duration of such requirements, shall be as determined by the Governor to be necessary to alleviate the electric energy emergency hardship. The Commonwealth shall compensate an entity required to generate, dispatch, or sell electricity pursuant to this subsection, and the operator of any transmission facilities over which the electricity is transmitted, in the manner provided in § 56-522, mutatis mutandis, unless otherwise provided by federal law. The Department of Environmental Quality~~, the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board~~ shall issue any temporary or emergency permit, order, or variance necessary to authorize any permit amendments or other changes needed to meet the requirements imposed under this section and the Governor may petition the President to declare a regional energy emergency under 42 U.S.C. § 7410(f) as necessary to suspend enforcement of any provision of the federal Clean Air Act. Any increased operation required during such declared emergency shall not be counted towards the number of hours of operation allowed during the year. No civil charges or penalties shall be imposed for any violation that occurs as a result of actions taken that are necessary for the required generation, dispatch or sale during the declared electric energy emergency. The foregoing provisions shall apply to all actions the entity takes in connection with such required generation, dispatch or sale during the period of the declared emergency.

D. During a declared electric energy emergency, the Governor may use the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the Commonwealth, and of the political subdivisions thereof, to the maximum extent practicable and necessary to meet the electric energy emergency. The officers and personnel of all such departments, offices, and agencies shall cooperate with and extend such services and facilities to the Governor upon request.

E. During a declared electric energy emergency, the Governor is authorized to request the Secretary of the United States Department of Energy to invoke section 202(C) of the Federal Power Act, 16 U.S.C. § 824a (1935).

F. The General Assembly is authorized by joint resolution to terminate any declaration of an electric energy emergency. The emergency shall be terminated at the time of filing of the joint resolution with the Secretary of the Commonwealth.

G. The Department of Emergency Services, in consultation with the Commission and the Secretary of Commerce and Trade, shall establish guidelines for the implementation of the Governor's powers pursuant to subsection C that protect the public health and safety and prevent unnecessary or avoidable damage to property with a minimum of economic disruption to generators, transmitters and distributors of electricity. Such guidelines shall:

1. Define various foreseeable levels of electric energy emergencies and specify appropriate measures to be taken for each type of electric energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property;

2. Prescribe appropriate response measures for each level of electric energy emergency; and

3. Equitably distribute the burdens and benefits resulting from the implementation of this section among other members of the affected class of persons within all geographic regions of the Commonwealth.

H. During a declared electric energy emergency, the attorney general may bring an action for injunctive or other appropriate relief in the Circuit Court of the City of Richmond to secure prompt compliance. The court may issue an ex parte temporary order without notice that shall enforce the prohibitions, restrictions or actions that are necessary to secure compliance with the guideline, order or declaration.

I. During a declared electric energy emergency, no person shall intentionally violate any guideline adopted or declaration issued pursuant to this section. Any person who violates this section is guilty of a Class 1 misdemeanor.

§ 58.1-2289. Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or § 58.1-2701, and remaining after authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

Revenues collected under this chapter may be also used for (i) contributions toward the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, and the Department of Motor Vehicles as may be provided by law.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the rate of seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per gallon, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, ~~the State Water Control Board,~~*the Department of Environmental Quality,* and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223, a sum as established by the General Assembly.

E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less taxes collected for aviation fuels.

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation. Certified pollution control equipment and facilities consisting of equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, including equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as landfill gas or synthetic or natural gas recovery from waste, placed in service on or after July 1, 2006, shall be exempt from state and local taxation pursuant to subsection d of Section 6 of Article X of the Constitution of Virginia.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority.

"State certifying authority" shall mean the ~~State Water Control Board~~*Director of the Department of Environmental Quality*~~,~~ for water pollution, ~~;~~ ~~the State Air Pollution Control Board, for~~ air pollution, *waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities*; the Department of Mines, Minerals and Energy, for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; ~~and the Virginia Waste Management Board, for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities,~~ and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

§ 58.1-3664. Environmental restoration sites.

Environmental restoration sites, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real property. The governing body of any county, city or town may, by ordinance, exempt or partially

exempt such property from local taxation annually for a period not in excess of five years.

"Environmental restoration site" means real estate which contains or did contain environmental contamination from the release of hazardous substances, hazardous wastes, solid waste or petroleum, the restoration of which would abate or prevent pollution to the atmosphere or waters of the Commonwealth and which (i) is subject to voluntary remediation pursuant to § 10.1-1232 and (ii) receives a certificate of continued eligibility from the ~~Virginia Waste Management Board~~*Director of the Department of Environmental Quality* during each year which it qualifies for the tax treatment described in this section.

§ 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~~*Virginia Board of Environmental Quality*.

~~"Member" means a member of the Board.~~

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

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Equality.

"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.

~~"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.

"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.

~~"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.~~

"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.

"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.

"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.

"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.

"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 and the Director.

"Rule" means a rule adopted by the Board to regulate the procedure of the Director.

"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.

"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.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) 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.

~~"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)*Director*.

"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).

"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.

§ 62.1-44.4. Control by Commonwealth as to water quality.

(1) No right to continue existing quality degradation in any state water shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future discharge of sewage, industrial wastes or other wastes or other action by any owner. The right and control of the Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed.

(2) Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at high quality; provided that the Board*Director* has the power to authorize any project or development, which would constitute a new or an increased discharge of effluent to high quality water, when it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development; and provided, further, that the necessary degree of waste treatment to maintain high water quality will be required where physically and economically feasible. Present and anticipated use of such waters will be preserved and protected.

§ 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate issued by the Board*Director*, it shall be unlawful for any person to:

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

2. Excavate in a wetland;

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

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

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

b. Filling or dumping;

c. Permanent flooding or impounding; or

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

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities unless in compliance with a permit issued pursuant to Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1.

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

§ 62.1-44.13. Inspections and investigations, etc.

The ~~Board~~*Director* shall make such inspections, conduct such investigations and do such other things as are necessary to carry out the provisions of this chapter, within the limits of appropriation, funds, or personnel which are, or become, available from any source for this purpose.

§ 62.1-44.15. Powers and duties of the Board and the Director; civil penalties.

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

(1) [Repealed.]

(2) ~~To~~*The Director shall* study and investigate all problems concerned with the quality of state waters and to make reports and recommendations.

(2a) ~~To~~*The Director shall* study and investigate methods, procedures, devices, appliances, and technologies that could assist in water conservation or water consumption reduction.

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

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

(3a) ~~To~~*The Board shall* 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 § 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~~*The Director shall* 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~~*Director* 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~~ *The Director shall* 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; (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 *and permits* 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~~*Director* 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~~*Director* 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~~*Director* 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 *or order of the Director*, 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~~*Director*, 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

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

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

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

(7) ~~To~~*The Board shall* adopt rules governing ~~the~~ ~~procedure~~ ~~of~~ ~~the~~ ~~Board~~*procedures* with respect to: (a) hearings; (b) the filing of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule

adopted under this section shall be by such means as the Board may prescribe.

(8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate issued by the ~~Board~~*Director* to comply with such terms and provisions, (iv) who have failed to comply with a directive from the ~~Board~~*Director* to comply with such directive, (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies, (vi) who have violated the terms and provisions of a pretreatment permit issued by the ~~Board~~*Director* or by the owner of a publicly owned treatment works to comply with such terms and provisions or (vii) who have contravened any applicable pretreatment standard or requirement to comply with such standard or requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the ~~Board~~*Director*. Orders issued pursuant to this subsection may include civil penalties of up to $32,500 per violation, not to exceed $100,000 per order. The ~~Board~~*Director* may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the ~~Board or the~~ Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be 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. The ~~Board~~*Director* shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties 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.), except that civil penalties assessed for violations of 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 the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11.

(8b) Such special orders are to be issued only after a hearing ~~before a hearing officer appointed by the Supreme Court~~ in accordance with § 2.2-4020 ~~or, if requested by the person, before a quorum of the Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof,~~ and they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided that if the ~~Board~~*Director* 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~~*Director* 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~~*Director*. If an emergency special order requires cessation of a discharge, the ~~Board~~*Director* 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~~*Director* 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 *of the Board* or order of the ~~Board~~*Director*, any condition of a permit or any provision of this chapter, the ~~Board~~*Director* may provide, in an order issued by the ~~Board~~*Director* 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~~*Director* 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~~*The Director shall* 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~~*Director*, the owner or owners affected to be notified by certified mail as soon as practicable after the ~~Board~~*Director* makes them and such rulings to become effective upon such notification.

(10) ~~To~~*The Board shall* 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~~*The Director shall* investigate any large-scale killing of fish.

(a) Whenever the ~~Board~~*Director* 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~~*Director* 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~~*Director* 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~~*Director* shall be deemed the owner of the fish killed and the proceedings shall be as though the ~~State Water Control Board~~*Director* 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~~*Director*, be applied, first, to reimburse the ~~Board~~*Director* 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.

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

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

(12) ~~To~~*The Director shall* administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in the Commonwealth.

(13) ~~To~~*The Director shall* establish policies and programs for effective area-wide or basin-wide water quality control and management. The ~~Board~~*Director* may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. In conjunction with this, the ~~Board~~*Director*, when considering proposals for waste treatment facilities, is to consider the feasibility of

combined or joint treatment facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water quality management and pollution control plan in the watershed or basin as a whole. In making such determinations, the ~~Board~~*Director* is to seek the advice of local, regional, or state planning authorities.

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

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

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

§ 62.1-44.15:01. Localities particularly affected.

A. ~~After June 30, 1994~~*If the Board,* before promulgating any regulation under consideration or *if the Director, before* granting any variance to an existing regulation, or issuing any permit, ~~if the Board~~*respectively* finds that there are localities particularly affected by the regulation, variance or permit, the Board *or Department, as appropriate,* shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the specific pollutants involved and the total quantity of each that may be discharged.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board *or the Director* for at least 15 days after any hearing on the regulation, variance or permit, unless the Board votes to shorten the period *or the Director determines to shorten the period*.

For the purposes of this section, the term "locality particularly affected" means any locality that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

B. On or after January 1, 2007, the ~~Board~~*Director* shall ensure that all wetland inventory maps that identify the location of wetlands in the Commonwealth and that are maintained by the ~~Board~~*Director* be made readily available to the public. The ~~Board~~*Director* shall notify the circuit court clerk's office and other appropriate officials in each locality of the availability of the wetland inventory maps and request that the locality provide information in the location where the land records of the locality are maintained on the availability of the wetland inventory maps as well as the potential Virginia Water Protection Permit requirements.

§ 62.1-44.15:1. Limitation on power to require construction of sewerage systems or sewage or other waste treatment works.

Nothing contained in this chapter shall be construed to empower the ~~Board~~*Director* to require the Commonwealth, or any political subdivision thereof, or any authority created under the provisions of § 15.2-5102 or §§ 15.2-5152 through 15.2-5158, to construct any sewerage system, sewage treatment works, or water treatment plant waste treatment works or system necessary to (1) upgrade the present level of treatment in existing systems or works to abate existing pollution of state waters, or (2) expand a system or works to accommodate additional growth, unless the ~~Board~~*Director* shall have previously committed itself to provide financial assistance from federal and state funds equal to the maximum amount provided for under § 8 or other applicable sections of the Federal Water Pollution Control Act (P.L. 84-660, as amended), or unless the Commonwealth or political subdivision or authority voluntarily agrees, or is directed by the ~~Board~~*Director* with the concurrence of the Governor, to proceed with such construction, subject to reimbursement under § 8, or other applicable sections of such federal act.

The foregoing restriction shall not apply to those cases where existing sewerage systems or sewage or other waste treatment works cease to perform in accordance with their approved certificate

requirements.

Nothing contained in this chapter shall be construed to empower the ~~Board~~*Director* to require the Commonwealth, or any political subdivision thereof, to upgrade the level of treatment in any works to a level more stringent than that required by applicable provisions of the Federal Water Pollution Control Act, as amended.

§ 62.1-44.15:1.1. Special orders; penalties.

The ~~Board~~*Director* is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the ~~Board~~*Director* a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the ~~Board~~*Department*, submission of a bond, corporate guarantee based upon audited financial statements, or such other instruments as the ~~Board~~*Director* may deem appropriate. The ~~Board~~*Director* may require that such plan and instruments be updated as appropriate. The ~~Board~~*Director* shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1309.1, 10.1-1410, and 10.1-1428, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with ~~Board~~ regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 62.1-44.15:2. Extraordinary hardship program.

There is hereby established a supplemental program of financial assistance for the construction of water quality control facilities by political subdivisions of the Commonwealth. All sums appropriated for this program shall be apportioned by the ~~Board~~*Director* among the political subdivisions qualifying, to provide financial assistance in addition to that otherwise available to help relieve extraordinary hardship in local funding of the construction of such facilities.

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

A. No application submitted to the ~~Board~~*Director* for a new individual Virginia Pollutant Discharge Elimination permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The county, city, or town shall inform in writing the applicant and the ~~Board~~*Director* of the discharging facility's compliance or noncompliance not more than thirty days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city, or town fail to provide such written notification within thirty days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid certificate had been issued prior to March 10, 2000.

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

§ 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~~*Director* 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~~*Director*. 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~~*Director* 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~~*Director* 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. The ~~Board~~*Director* 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~~*Director*.

E. Upon the commencement of public notice of an enforcement action pursuant to this chapter, the ~~Board~~*Director* 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~~*Director*.

§ 62.1-44.15:5. Virginia Water Protection Permit.

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

B. The ~~Board~~*Director* 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. 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 a beneficial use of Virginia's waters. Conditions contained in a Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses.

D. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall be unlawful to excavate in a wetland. On and after October 1, 2001, except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall also be unlawful to conduct 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. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be

issued only if the ~~Board~~*Director* 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. 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 subsection E, or contributing to a fund that is approved by the ~~Board~~*Director* and is 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. The ~~Board~~*Director* shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts. Within 15 days of receipt of an individual permit application, the ~~Board~~*Director* shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the ~~Board~~*Director* shall issue the permit, issue the permit with conditions, deny the permit or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing.

The ~~Board~~*Director* shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the ~~Board~~*Director* deems necessary to protect state waters and fish and wildlife resources from significant impairment. The ~~Board~~*Director* shall deny, approve or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. Within 15 days of receipt of a general permit application, the ~~Board~~*Director* shall review the application for completeness and either accept the application or request additional specific information from the applicant. A determination that an application is complete shall not mean the ~~Board~~*Director* will issue the permit but means only that the applicant has submitted sufficient information to process the application. The application shall be deemed approved if the ~~Board~~*Director* fails to act within 45 days. The ~~Board~~*Director* 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~~*Director* 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~~*Director* 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~~*Director* 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~~*Director* 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~~*Director* copies of any preconstruction notification, postconstruction report and certificate of compliance required by the U.S. Army Corps of Engineers.

The ~~Board~~ ~~shall~~ ~~utilize~~ ~~the~~ U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" ~~as~~*shall be* 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~~*Director* issues a permit pursuant to this subsection 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.

This subsection shall not apply to activities governed under Chapter 13 (§ 28.2-100 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This subsection shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities which are incidental to an occupant's ongoing residential use of property and of minimal ecological impact; the Board shall develop criteria governing this exemption and shall specifically identify the activities

meeting these criteria in its regulations.

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

E. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank in the Commonwealth, or in Maryland on property wholly surrounded by and located in the Potomac River if the mitigation banking instrument provides that the ~~Board~~*Director* shall have the right to enter and inspect the property and that the mitigation bank instrument and the contract for the purchase or use of such credits may be enforced in the courts of the Commonwealth, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted site, or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this subsection; (2) the bank is ecologically preferable to practicable on-site and off-site 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. After July 1, 2002, the provisions of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of wetlands 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. State agencies are authorized to purchase credits from wetland mitigation banks.

F. Prior to the issuance of a Virginia Water Protection Permit, the ~~Board~~*Director* 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~~*Director*. The ~~Board~~*Director* shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit.

G. No Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal.

H. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

I. On and after July 1, 2000, and prior to the adoption of regulations promulgated pursuant to subsection D, absent the issuance of a permit by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act, no person shall excavate in a wetland without compensating for the impact to the wetland to the satisfaction of the ~~Board~~*Director* in a manner sufficient to achieve no net loss of existing wetland acreage and functions.

J. The ~~Board~~*Director* may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be

issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in subsection F, and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of subsection B, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under the other provisions of this section. The application for the Virginia Water Protection Permit shall be subject to public comment for a period established by the ~~Board~~*Director*. Any Emergency Virginia Water Protection Permit issued under this subsection shall be valid until the ~~Board~~*Director* approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

§ 62.1-44.15:5.01. Coordinated review of water resources projects.

A. Applications for water resources projects that require an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § 28.2-1205 shall be submitted and processed through a joint application and review process.

B. The Director and the Commissioner of the Virginia Marine Resources Commission, in consultation with the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Department of Environmental Quality and the Virginia Marine Resources Commission; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments, within 45 days of project notification by the Department of Environmental Quality and the Virginia Marine Resources Commission; (iii) the ~~Board~~*Director* and the Virginia Marine Resources Commission shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the ~~Board~~*Director* and the Virginia Marine Resources Commission shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the ~~Board~~*Director* and the Virginia Marine Resources Commission shall provide each other with notification of their actions and any and all supporting information, including any background materials or exhibits used in the application.

D. If requested by the applicant, the Department of Environmental Quality shall convene a preapplication review panel to assist applicants for water resources projects in the early identification of issues related to the protection of beneficial instream and offstream uses of state waters. The Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, and the Department of Environmental Quality shall participate in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant. However, the participation by these agencies in such a review process shall not limit any authority they may exercise pursuant to state and federal laws or regulations.

§ 62.1-44.15:5.1. General permit for certain water quality improvement activities.

A. The ~~Board~~*Director* shall coordinate the development of a general permit for activities such as bioengineered streambank stabilization projects and livestock stream crossings that: (i) are coverable by the Nationwide Permit Program (33 C.F.R. Part 330) of the United States Army Corps of Engineers and for which certification has not been waived by the ~~Board~~*Director*; (ii) are conservation practices designed and supervised by a soil and water conservation district; (iii) meet the design standards of the Department of Conservation and Recreation and the United States Department of Agriculture's Natural Resource Conservation Service; and (iv) are intended to improve water quality. The development of the general permit shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

B. The development of the general permit shall be a coordinated effort between the Department of Environmental Quality, the Virginia Marine Resources Commission and such other agencies as may be needed to develop a single, unified, process that will expedite the implementation of the projects described in subsection A and unify and streamline the permitting process for such projects.

C. A general permit pursuant to this section shall be promulgated as final by July 1, 1998.

§ 62.1-44.15:5.2. General permits for ready-mix concrete plant discharges.

Any general permit ~~issued by the Board~~ for discharges of stormwater and process wastewater from

industrial activities associated with the manufacture of ready-mix concrete shall apply to both permanent and portable plants. The general permit may include a requirement that settling basins for the treatment and control of process wastewater and commingled stormwater be lined with concrete or other impermeable materials for settling basins constructed on or before February 1, 1998, and shall include such a requirement for all settling basins constructed on or after February 2, 1998.

§ 62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the ~~State Water Control Board's~~*Department's*, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the ~~Board~~*Director* has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The ~~Board~~*Director* shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a Virginia Pollution Abatement permit shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the ~~Board~~*Director* charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects or for the regularly scheduled renewal of an individual permit for an existing facility. Fees shall be charged for a major modification or reissuance of a permit initiated by the permittee that occurs between permit issuance and the stated expiration date. No fees shall be charged for a modification or amendment made at the ~~Board~~*Director*'s initiative. In no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	$24,000
Major Municipal	$21,300
Minor Industrial with nonstandard limits	$10,300
Minor Industrial with standard limits	$ 6,600
Minor Municipal greater than 100,000 gallons per day	$7,500
Minor Municipal 10,001-100,000 gallons per day	$6,000
Minor Municipal 1,000-10,000 gallons per day	$5,400
Minor Municipal less than 1,000 gallons per day	$2,000
General-industrial stormwater management	$ 500
General-stormwater management-phase I land clearing	$ 500
General-stormwater management-phase II land clearing	$ 300
General-other	$ 600
2. Virginia Pollution Abatement	
Industrial/Wastewater 10 or more inches per year	$15,000
Industrial/Wastewater less than 10 inches per year	$10,500
Industrial/Sludge	$ 7,500
Municipal/Wastewater	$13,500
Municipal/Sludge	$ 7,500
General Permit	$ 600
Other	$ 750

The fee for the major modification of a permit or certificate that occurs between the permit issuance and expiration dates shall be 50 percent of the maximum amount established by this subsection. No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

B2. Each permitted facility shall pay a permit maintenance fee to the ~~Board~~*Director* by October 1 of each year, not to exceed the following amounts:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	$4,800
Major Municipal greater than 10 million gallons per day	$4,750
Major Municipal 2-10 million gallons per day	$4,350
Major Municipal less than 2 million gallons per day	$3,850
Minor Industrial with nonstandard limits	$2,040
Minor Industrial with standard limits	$1,320
Minor Industrial water treatment system	$1,200
Minor Municipal greater than 100,000 gallons per day	$1,500
Minor Municipal 10,001-100,000 gallons per day	$1,200
Minor Municipal 1,000-10,000 gallons per day	$1,080
Minor Municipal less than 1,000 gallons per day	$ 400
2. Virginia Pollution Abatement	
Industrial/Wastewater 10 or more inches per year	$3,000
Industrial/Wastewater less than 10 inches per year	$2,100
Industrial/Sludge	$3,000
Municipal/Wastewater	$2,700
Municipal/Sludge	$1,500

An additional permit maintenance fee of $1,000 shall be collected from facilities in a toxics management program and an additional permit maintenance fee shall be collected from facilities that have more than five process wastewater discharge outfalls. Permit maintenance fees shall be collected annually and shall be remitted by October 1 of each year. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the permit maintenance fees for permits held as of April 1, 2004, shall not exceed $20,000 per year. No permit maintenance fee shall be assessed for facilities operating under a general permit or for permits pertaining to a farming operation engaged in production for market.

B3. Permit application fees charged for Virginia Water Protection Permits, ground water withdrawal permits, and surface water withdrawal permits shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions and the size of the proposed impact. Only one permit fee shall be assessed for a water protection permit involving elements of more than one category of permit fees under this section. The fee shall be assessed based upon the primary purpose of the proposed activity. In no instance shall the ~~Board~~*Director* charge a fee for a permit pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers-sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit	Maximum Amount
1. Virginia Water Protection	

Individual-wetland impacts	$2,400 plus $220 per 1/10 acre of impact over two acres, not to exceed $60,000
instream flow	$25,000
Individual-reservoir	$35,000
Individual-nonmetallic mineral mining	$7,500
General-less than 1/10 acre impact	$0
General-1/10 to 1/2 acre impact	$600
General-greater than 1/2 to one acre impact	$1,200
General-greater than one acre to two acres of impact	$120 per 1/10 acre of impact
2. Ground Water Withdrawal	$6,000
3. Surface Water Withdrawal	$12,000

No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

C. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the ~~Board~~*Director* shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the ~~Board~~*Director for the water permit program*, (iv) the amount of federal funds received, (v) the ~~Board's~~*Director's* use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the ~~Board~~*Department*.

F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits that may be required by the federal government and administered by the ~~Board~~*Director*, or any new permit required pursuant to any law of the Commonwealth.

G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits and shall establish criteria by regulation to provide for reductions in the annual fee amount assessed for facilities accepted into the Department's programs to recognize excellent environmental performance.

§ 62.1-44.15:7. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the State Water Control ~~Board~~ Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to § 62.1-44.15:6 shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The ~~Board~~*Director* is authorized and empowered to release moneys from the Fund, on warrants

issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title under the direction of the Executive Director.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

§ 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~~*Director* for the treatment or control of such industrial wastes or other wastes.

Application for such discharge shall be made to the ~~Board~~*Director* and shall be accompanied by pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the ~~Board~~*Director*.

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

(b) The ~~Board~~*Director* shall review the application and the information that accompanies it as soon as practicable and making a ruling within a period of four months from the date the application is filed with the ~~Board~~*Director* approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the ~~Board~~*Director* shall grant a certificate for the discharge of the industrial wastes or other wastes into state waters or for the other alteration of the physical, chemical or biological properties of state waters, as the case may be. If the application is disapproved, the ~~Board~~*Director* shall notify the owner as to what measures, if any, the owner may take to secure approval.

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

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

§ 62.1-44.17. Other wastes.

(1) Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-44.3, any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the ~~Board~~*Director* install facilities approved by the ~~Board~~*Director* or adopt such measures approved by the ~~Board~~*Director* as are necessary to prevent the escape, flow or discharge into any state waters when the escape, flow or discharge of such other wastes into any state waters would cause pollution of such state waters.

(2) Any owner under this section requested by the ~~Board~~*Director* to provide facilities or adopt such measures shall make application therefor to the ~~Board~~*Director*. Such application shall be accompanied by a copy of pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the ~~Board~~*Director*.

(3) The ~~Board~~*Director* shall review the application and the information that accompanies it as soon as practicable and make a ruling within a period of four months from the date the application is filed with the ~~Board~~*Director* approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the ~~Board~~*Director* shall grant a certificate for the handling, storing, distribution or production of such other wastes. If the application is disapproved, the ~~Board~~*Director* shall notify the owner as to what measures the owner may take to secure approval.

§ 62.1-44.17:1. Permits for confined animal feeding operations.

A. For the purposes of this chapter, "confined animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Two or more confined animal feeding operations under common ownership are considered to be a

single confined animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of liquid waste.

A1. Notwithstanding the provisions of subsection B, the ~~Board~~*Director* shall promulgate regulations requiring Virginia Pollutant Discharge Elimination System permits for confined animal feeding operations to the extent necessary to comply with § 402 of the federal Clean Water Act (33 U.S.C. § 1342), as amended.

B. A confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system, upon fulfillment of the requirements of this section, shall be permitted by a General Virginia Pollution Abatement permit (hereafter referred to as the "General Permit"), adopted ~~by the Board~~ *and issued by the Director*. In adopting the General Permit the ~~Board~~*Director* shall:

1. Authorize the General Permit to pertain to confined animal feeding operations having 300 or more animal units;

2. Establish procedures for submitting a registration statement meeting the requirements of subsection C. Submitting a registration statement shall be evidence of intention to be covered by the General Permit; and

3. Establish criteria for the design and operation of confined animal feeding operations only as described in subsection E.

C. For coverage under the General Permit, the owner of the confined animal feeding operation shall file a registration statement with the Department of Environmental Quality providing the name and address of the owner of the operation, the name and address of the operator of the operation (if different than the owner), the mailing address and location of the operation, and a list of the types, maximum number and average weight of the animals that will be maintained at the facility. The owner shall attach to the registration statement:

1. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation;

2. A copy of the approved nutrient management plan;

3. A notification from the governing body of the locality where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2;

4. A certification that the owner or operator meets all the requirements of the ~~Board~~*Director* for the General Permit; and

5. A certification that the owner has given notice of the registration statement to all owners or residents of property that adjoins the property on which the proposed operation will be located. Such notice shall include (i) the types and maximum number of animals that will be maintained at the facility and (ii) the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. Such certification of notice shall be waived whenever the registration is for the purpose of renewing coverage under a permit for which no expansion is proposed and the Department of Environmental Quality has not issued any special or consent order relating to violations under the existing permit.

D. Any person may submit written comments on the proposed operation to the Department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the Director determines that the proposed operation will not be capable of complying with the provisions of this section, the Director shall require the owner to obtain an individual permit for the operation. Any such determination by the Director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the Director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.

E. The criteria for the design and operation of a confined animal feeding operation shall be as follows:

1. The operation shall have a liquid manure collection and storage facility designed and operated to: (i) prevent any discharge to state waters, except a discharge resulting from a storm event exceeding a 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste;

2. The operation shall implement and maintain on site a nutrient management plan approved pursuant to subdivision 1 of subsection C. The nutrient management plan shall contain at a minimum the following information: (i) a site map indicating the location of the waste storage facilities and the fields where waste will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil and waste monitoring; (iv) storage and land area requirements; (v) calculation of waste application rates; (vi) waste application schedules; and (vii) a plan for waste utilization in the event the operation is discontinued;

3. Adequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings;

4. The operation shall be monitored as follows: (i) waste shall be monitored at least once per year; (ii) soil shall be monitored at least once every three years; (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring. In such facilities constructed below the water table, the top surface of the waste must be maintained at a level of at least two feet above the water table. The Department of Environmental Quality and the Department of Conservation and Recreation may include in the permit or nutrient management plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. Such records shall be available for inspection by the Department of Environmental Quality and shall be maintained for a period of five years after recorded application is made;

5. New earthen waste storage facilities shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this section;

6. New waste storage facilities shall not be located on a 100-year flood plain;

7. All facilities must maintain one foot of freeboard at all times, up to and including a 25-year, 24-hour storm;

8. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. Manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate;

9. The owner or operator of the operation shall notify the Department of Environmental Quality at least 14 days prior to animals being placed in the confined facility; and

10. Each operator of a facility covered by the General Permit on July 1, 1999, shall, by January 1, 2000, complete the training program offered or approved by the Department of Conservation and Recreation under subsection F. Each operator of a facility permitted after July 1, 1999, shall complete such training within one year after the registration statement required by subsection C has been submitted. Thereafter, all operators shall complete the training program at least once every three years.

F. The Department of Conservation and Recreation, in consultation with the Department of Environmental Quality and the Virginia Cooperative Extension Service, shall develop or approve a training program for persons operating confined animal feeding operations covered by the General Permit. The program shall include training in the requirements of the General Permit; the use of best management practices; inspection and management of liquid manure collection, storage and application systems; water quality monitoring and spill prevention; and emergency procedures.

G. Operations having an individual Virginia Pollution Abatement permit or a No Discharge Certificate may submit a registration statement for operation under the General Permit pursuant to this section.

H. The Director ~~of the Department of Environmental Quality~~ may require the owner of a confined animal feeding operation to obtain an individual permit for an operation subject to this section upon determining that the operation is in violation of the provisions of this section or if coverage under an individual permit is required to comply with federal law. New or reissued individual permits shall contain criteria for the design and operation of confined animal feeding operations including, but not limited to, those described in subsection E.

I. No person shall operate a confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in subsection C or being covered by a Virginia Pollutant Discharge Elimination System permit or an individual Virginia Pollution Abatement permit.

J. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty imposed shall not exceed $2,500 for any confined animal feeding operation covered by a Virginia Pollution Abatement permit.

§ 62.1-44.17:1.1. Poultry waste management program.

A. As used in this section, unless the context requires a different meaning:

"Commercial poultry processor" means any animal food manufacturer, as defined in § 3.1-884.18, that contracts with poultry growers for the raising of poultry.

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry.

"Nutrient management plan" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.

"Poultry grower" means any person who owns or operates a confined poultry feeding operation.

B. The Board shall develop a regulatory program governing the storage, treatment and management of poultry waste, including dry litter, that:

1. Requires the development and implementation of nutrient management plans for any person owning or operating a confined poultry feeding operation;

2. Provides for waste tracking and accounting; and

3. Ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan.

C. The program shall include, at a minimum:

1. Provisions for permitting confined poultry feeding operations under a general permit; however, the ~~Board~~*Director* may require an individual permit upon determining that an operation is in violation of the program developed under this section;

2. Provisions requiring that:

a. Nitrogen application rates contained in nutrient management plans developed pursuant to this section shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leaching, and volatilization losses, and reduce adverse water quality impacts from nitrogen;

b. For all nutrient management plans developed pursuant to this section after October 1, 2001, phorous application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal, as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus;

c. By December 31, 2005, the Department of Conservation and Recreation, in consultation with the Department of Environmental Quality, shall (i) complete an examination of current developments in scientific research and technology that shall include a review of land application of poultry waste, soil nutrient retention capacity, and water quality degradation and (ii) adopt and implement regulatory or other changes, if any, to its nutrient management plan program that it concludes are appropriate as a result of this examination; and

d. Notwithstanding subdivision 2 b, upon the effective date of the Department of Conservation and Recreation's revised regulatory criteria and standards governing phosphorus application rates adopted pursuant to subdivision 2 c, or on October 31, 2005, whichever is later, phosphorous application rates for all nutrient management plans developed pursuant to this section shall conform solely to such regulatory criteria and standards adopted by the Department of Conservation and Recreation to protect water quality or to reduce soil concentrations of phosphorus or phosphorous loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus.

D. The program shall reflect Board consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the Board determines appropriate for the protection of state waters.

E. After October 1, 2001, all persons owning or operating a confined poultry feeding operation shall operate in compliance with the provisions of this section and any regulations promulgated thereunder.

F. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty shall not exceed $2,500 for any confined animal feeding operation covered by a Virginia Pollution Abatement permit.

G. On or before January 1, 2000, or prior to commencing operations, each commercial poultry processor operating in the Commonwealth shall file with the ~~Board~~*Director* a plan under which the processor, either directly or under contract with a third party, shall:

1. Provide technical assistance to the poultry growers with whom it contracts on the proper management and storage of poultry waste in accordance with best management practices;

2. Provide education programs on poultry waste nutrient management for the poultry growers with whom it contracts as well as for poultry litter brokers and persons utilizing poultry waste;

3. Provide a toll-free hotline and advertising program to assist poultry growers with excess amounts of poultry waste to make available such waste to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes;

4. Participate in the development of a poultry waste transportation and alternative use equal matching

grant program between the Commonwealth and commercial poultry processors to (i) facilitate the transportation of excess poultry waste in the possession of poultry growers with whom it contracts to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes and (ii) encourage alternative uses to land application of poultry waste;

5. Conduct research on the reduction of phosphorus in poultry waste, innovative best management practices for poultry waste, water quality issues concerning poultry waste, or alternative uses of poultry waste; and

6. Conduct research on and consider implementation of nutrient reduction strategies in the formulation of feed. Such nutrient reduction strategies may include the addition of phytase or other feed additives or modifications to reduce nutrients in poultry waste.

H. Any amendments to the plan required by subsection G shall be filed with the ~~Board~~*Director* before they are implemented. After January 1, 2000, each commercial poultry processor shall implement its plan and any amendments thereto. Each commercial poultry processor shall report annually to the ~~Board~~*Director* on the activities it has undertaken pursuant to its plan and any amendments thereto. Failure to comply with the provisions of this section or to implement and follow a filed plan or any amendments thereto shall constitute a violation of this section.

§ 62.1-44.17:3. Toxics reduction in state waters; report required.

A. The ~~Board~~*Director* shall (i) conduct ongoing assessments of the amounts of toxics in Virginia's waters and (ii) develop and implement a plan for the reduction of toxics in Virginia's waters.

B. The status of the ~~Board's~~*Director's* efforts to reduce the level of toxic substances in state waters shall be reported annually, no later than January 1, to the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries, and the Senate Committee on Agriculture, Conservation and Natural Resources. The initial report shall be submitted no later than January 1, 1998, and shall include data from the previous five years on the trends of the reduction and monitoring of toxics in state waters. The initial report and each subsequent annual report shall include, but not be limited to, the following information:

1. Compliance data on permits that have limits for toxics;

2. The number of new permits or reissued permits that have toxic limits and the location of each permitted facility;

3. The location and number of monitoring stations and the period of time that monitoring has occurred at each location;

4. A summary of pollution prevention and pollution control activities for the reduction of toxics in state waters;

5. The sampling results from the monitoring stations for the previous year;

6. The ~~Board's~~*Director's* plan for continued reduction of the discharge of toxics which shall include, but not be limited to, additional monitoring activities, a work plan for the pollution prevention program, and any pilot projects established for the use of innovative technologies to reduce the discharge of toxics;

7. The identification of any segments for which the ~~Board~~ ~~or~~ ~~the~~ Director of the Department of Environmental Quality has made a decision to conduct additional evaluation or monitoring. Information regarding these segments shall include, at a minimum, the geographic location of the stream segment within a named county or city; and

8. The identification of any segments that are designated as toxic impaired waters as defined in § 62.1-44.19:4 and any plans to address the impairment.

§ 62.1-44.17:4. Evaluation of toxics removal and remediation technology.

The ~~Board~~*Director* shall conduct a review of instream toxics removal or remediation technologies, a minimum of once every five years, to determine whether (i) new technologies for responding to toxic contamination will necessitate any changes in the selection of removal or remediation strategies previously included as provisions of ~~Board~~*Director* agreements and (ii) any of the ~~Department of Environmental Quality's~~ current strategies for responding to toxic contamination need to be revised.

§ 62.1-44.18. Sewerage systems, etc., under supervision of the Director.

A. All sewerage systems and sewage treatment works shall be under the general supervision of the ~~Board~~*Director*.

B. The Department of Environmental Quality shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works as to the most appropriate type of treatment, but the Department shall not prepare plans, specifications, or detailed estimates of cost for any improvement of an existing or proposed sewage treatment works.

C. It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any state waters to furnish, when requested by the ~~Board~~*Director*,

information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required.

D. The regulations of the Board shall govern the collection, conveyance, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit prior to the construction, installation, modification or operation of a sewerage system or treatment;

2. Criteria for the granting or denial of such permits;

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works;

4. Standards specifying the minimum distance between sewerage systems or treatment works and:

(a) Public and private wells supplying water for human consumption,

(b) Lakes and other impounded waters,

(c) Streams and rivers,

(d) Shellfish waters,

(e) Ground waters,

(f) Areas and places of human habitation, and

(g) Property lines;

5. Standards as to the adequacy of an approved water supply;

6. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth; and

7. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.

E. In addition to factors related to the ~~Board's~~*Director's* responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 62.1-44.18:2. When Director may prohibit discharge; permits.

A. Notwithstanding any other provision of this chapter, the ~~Board~~*Director* shall have the authority to prohibit any present or proposed discharge of sewage, industrial wastes, or other wastes into any sewerage system or treatment works when it has determined that such discharge would threaten the public health and safety, or would substantially interfere or be incompatible with the treatment works, or would substantially interfere with usage of state waters as designated by the ~~Board~~*Director*. Before making any such determination, the ~~Board~~*Director* shall consult with and receive the advice of the State Department of Health.

B. The ~~Board~~*Director* shall have the authority to issue permits which prescribe the terms and conditions upon which the discharge of sewage, industrial wastes, or other wastes may be made into any sewerage system or treatment works. The ~~Board~~*Director* may revoke or amend any such permit for good cause and after proper hearing. Notwithstanding the requirement for notice and a hearing, the ~~Board~~*Director* may, after consultation with the State Department of Health, summarily revoke or amend such permit when it determines that the permitted discharge poses a threat to the public health and safety, or is interfering substantially with the treatment works, or is grossly affecting usage of state waters as designated by the ~~Board~~*Director*. In such case, the ~~Board~~*Director* shall hold a hearing as soon as practicable but in no event later than twenty days after the revocation or amendment with reasonable notice to the owner as to the time and place thereof to affirm, modify, or rescind the summary revocation or amendment of such permit.

C. Nothing in this section shall limit the authority of the ~~Board~~*Director* to proceed against such owner directly under § 62.1-44.23 or § 62.1-44.32 after the ~~Board~~*Director* has prohibited discharge, or after the ~~Board~~*Director* has summarily amended or revoked the permit which authorized the discharge. If a proposed revocation or amendment of a permit is mutually agreeable to the ~~Board~~*Director* and the owner, the hearing and notice thereof may be dispensed with.

§ 62.1-44.18:3. Permit for private sewerage facility; financial assurance; violations; waiver of filing.

A. No person shall operate a privately owned sewerage system or sewerage treatment works, including an LHS 120 facility, that discharges more than 1,000 gallons per day and less than 40,000 gallons per day without obtaining a Virginia Pollutant Discharge Elimination System permit. Any owner of such a facility shall file with the ~~Board~~*Director* a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the creation of a trust fund, a submission of a bond, a corporate guarantee based upon audited financial statements, or such other

instruments as the ~~Board~~*Director* may deem appropriate. The ~~Board~~*Director* may require that such plan and instruments be updated as appropriate.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility that is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat. This shall not in any way limit other recourse available to the ~~Board~~*Director*.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

B. The ~~Board~~*Director* may waive the filing of the plan required pursuant to subsection A for any person who operates a privately owned sewerage system or sewerage treatment works that was permitted prior to January 1, 2001, and discharges less than 5,000 gallons per day upon a finding that such person has not violated any regulation or order of the ~~Board~~*Director*, any condition of a permit to operate the facility, or any provision of this chapter for a period of not less than five years; provided, that no waiver may be approved by the ~~Board~~*Director* until after the governing body of the locality in which the facility is located approves the waiver after a public hearing. The ~~Board~~*Director* may revoke such waiver at any time for good cause. Any person receiving a waiver who ceases operations shall, if such cessation of operation results in a significant harm or an imminent and substantial risk of significant harm to human health and the environment, be guilty of a Class 4 felony and liable to the Commonwealth and any political subdivision thereof, for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

C. The Department of Environmental Quality shall promulgate regulations necessary to carry out the provisions of this section. The Department shall identify by January 1, 2001, those facilities regulated under this section.

§ 62.1-44.19. Approval of sewerage systems and sewage treatment works.

A. Before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the ~~Board~~*Director* an application for a certificate in scope and detail satisfactory to the ~~Board~~*Director*.

B. If the application involves a system or works from which there is or is to be a discharge to state waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe. Before issuing the certificate, the ~~Board~~*Director* shall consult with and give consideration to the written recommendations of the State Department of Health pertaining to the protection of public health. Upon completion of advertising, the ~~Board~~*Director* shall determine if the application is complete, and if so, shall act upon it within 21 days of such determination. The ~~Board~~*Director* shall approve such application if it determines that minimum treatment requirements will be met and that the discharge will not result in violations of water quality standards. If the ~~Board~~*Director* disapproves the application, it shall state what modifications or changes, if any, will be required for approval.

C. After the certificate has been issued or amended by the ~~Board~~*Director*, the owner shall acquire from the Department of Environmental Quality (i) authorization to construct the systems or works for which the ~~Board~~*Director* has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations shall be obtained in accordance with regulations promulgated by the Board.

D. Any owner operating under a valid certificate issued by the ~~Board~~*Director* who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Department of Environmental Quality, in accordance with the provisions of subsection C of this section, within a reasonable time to meet such new requirements. The ~~Board~~*Director* may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least 30 days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the ~~Board~~*Director* and the owner involved, the hearing and notice may be dispensed with.

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

§ 62.1-44.19:1. Whenever the State Department of Health or the ~~State Water Control Board~~*Director of the Department of Environmental Quality* determines that a receiving stream in Virginia Beach is being polluted by the sewage discharge from a private or public sewage utility, and that it is possible to connect such utility to the sewage system of a municipality, sewage treatment authority, or sanitation district, the Board is hereby empowered to order the utility in Virginia Beach to stop such discharge into the receiving stream. The utility shall discontinue the said discharge either by adequate treatment as determined by the State Department of Health or ~~Water Control Board~~*the Director of the Department of Environmental Quality*, or by connection to central facilities, either of which is to occur within one year.

§ 62.1-44.19:2. On and after January one, nineteen hundred seventy-three, all sewage pumping stations in Chesapeake, Newport News, Hampton, Norfolk and Virginia Beach shall:

(a) have adequate personnel on call at all times, each of whom may serve multiple pumping stations, as prescribed by the Chesapeake, Newport News, Hampton, Norfolk, and Virginia Beach City Councils, respectively;

(b) be inspected at such intervals and maintain such records of inspection as shall be prescribed by the Board, which records shall be open for review by the Board or its representatives at any reasonable time it shall designate;

(c) have an automatic alarm system installed to give immediate warning of any pump station failure;

(d) have emergency pump connections installed and have portable pumps available to pump sewage to downstream sewer lines during periods of pump station failure; and

(e) not use, except in an emergency as provided by the Board, any overflow lines from such pumping stations, except as provided in subsection (d) herein.

Any sewerage system within the cities of Chesapeake, Newport News, Hampton, Norfolk and Virginia Beach which complies with the requirements of this section shall be deemed to meet the requirements for continuous operability as set forth in the regulations of the State Department of Health or the ~~State Water Control Board~~*Virginia Board of Environmental Quality*.

§ 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit; ordinances; notice requirement; fees.

A. 1. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit ~~issued by the Board~~.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The ~~Board~~*Director* may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

B. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the ~~Board~~*Director* or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.

C. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

D. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a certified laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

E. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least

100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

F. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

G. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection D of § 32.1-164.5, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

H. Not later than January 1, 2003, the Board of Health shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under subsection B, in counties, cities or towns that have adopted ordinances in accordance with subsection C. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department of Health as provided for by regulation. The fee shall not exceed the amount necessary to reimburse the direct costs for a reasonable amount of testing and for the monitoring of the land application of sewage sludge by counties, cities and towns that have adopted such ordinances. The fee shall be imposed on each dry ton of sewage sludge that is land applied in such counties, cities and towns in accordance with the regulations adopted by the Board of Health. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department of Health;

2. Retention of proceeds in a special nonreverting fund to be administered by the Department of Health; and

3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge, as provided for in this subsection.

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

A. The ~~Board~~*Director* 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 in accordance with the schedule required by federal law, 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~~*Director*shall conduct monitoring as described in subsection B and consider and incorporate factors as described in subsection C into the reports. The ~~Board~~*Director* 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. Contingent upon the appropriation of adequate funding for this purpose, the number of water quality monitoring stations and the frequency of sampling shall be increased by at least five percent annually, until such representative monitoring is achieved, and 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~~*Director* shall update the plan annually. The ~~Board~~*Director* shall develop and implement the plan and schedule for the phasing in of monitoring required by this subdivision. The ~~Board~~*Director* 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 benthic macro-invertebrate organisms and fish tissue monitoring, and provides for specific assessments of water quality based on the results of such monitoring. Contingent upon the appropriation of adequate funding for this purpose, all fish tissue and sediment monitoring for the segments identified in the water quality monitoring plan shall occur at least once every three years.

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~~*the* 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~~*Director* 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~~*Director* 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~~*Director* shall refer to the 303(d) and 305(b) reports in determining proper staff and resource allocation.

F. The ~~Board~~*Director* shall accept and review requests from the public regarding specific segments that should be included in the water quality monitoring plan described in subdivision B 3 of this section. Each request received by December 31 of the preceding year shall be reviewed when the agency develops or updates the water quality monitoring plan. Such requests shall include (i) a geographical description of the waterbody recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. The ~~Board~~*Director* shall respond in writing, either approving the request or stating the reasons a request under this subsection has been denied, by April 30 for requests received by December 31 of the preceding year. Such determination shall not be a regulation or case decision as defined by § 2.2-4001.

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

A. The ~~Board~~*Director*, 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~~*Director* and shall contain (i) the basis for the impaired designation and (ii) a statement of the potential health risks provided by the Virginia Department of Health. The ~~Board~~*Director* shall annually notify local newspapers, and persons who request notice, of any posting and its contents. The ~~Board~~*Director* 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.

3. Make information regarding the presence of toxics in fish tissue and sediments available to the public on the Internet and through other reasonable means for at least five years after the information is received by the Department of Environmental Quality. The Department of Environmental Quality shall post on the Internet and in the Virginia Register on or about January 1 and July 1 of each year an announcement of any new data that has been received over the past six months and shall make a copy of the information available upon request.

B. The ~~Board~~*Director* 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 Virginia Department of Health determines that the discharge may be detrimental to the public health or the ~~Board~~*Director* determines that the discharge may impair beneficial uses of state waters.

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

A. The ~~Board~~*Director* 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 *by the Board* 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~~*Director* 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~~*Director* 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 *the Director shall* 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~~*Director* of toxic-impaired waters, include provisions as required by § 62.1-44.19:8.

E. If an aggrieved party presents to the Board reasonable grounds indicating that the attainment of the designated use for a water is not feasible, then the Board, after public notice and at least 30 days provided for public comment, may allow the aggrieved party to conduct a use attainability analysis according to criteria established pursuant to the Clean Water Act and a schedule established by the Board. If applicable, the schedule shall also address whether TMDL development or implementation for the water should be delayed.

§ 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~~*Director* shall review and consider the owner's evaluation of the options in determining the conditions and limitations of the permit.

§ 62.1-44.19:14. Watershed general permit for nutrients.

A. By January 1, 2006, or as soon thereafter as possible, the ~~Board~~*Director* shall issue a Watershed General Virginia Pollutant Discharge Elimination System Permit, hereafter referred to as the general permit, authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Except as otherwise provided in this article, the general permit shall control in lieu of technology-based, water quality-based, and best professional judgment, interim or final effluent limitations for total nitrogen and total phosphorus in individual Virginia Pollutant Discharge Elimination System permits for facilities covered by the general permit where the effluent limitations for total nitrogen and total phosphorus in the individual permits are based upon standards, criteria, waste load allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

B. This section shall not be construed to limit or otherwise affect the ~~Board's~~*Director's* authority to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

C. The general permit shall contain the following:

1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility expressed as annual mass loads. The allocations for each permitted facility shall reflect the applicable individual water quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of two or more facilities located in the same tributary may apply for and receive an aggregated waste load allocation for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple facilities reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations established for such facilities individually;

2. A schedule requiring compliance with the combined waste load allocations for each tributary as soon as possible taking into account (i) opportunities to minimize costs to the public or facility owners by phasing in the implementation of multiple projects; (ii) the availability of required services and skilled labor; (iii) the availability of funding from the Virginia Water Quality Improvement Fund as established in § 10.1-2128, the Virginia Water Facilities Revolving Fund as established in § 62.1-225, and other financing mechanisms; (iv) water quality conditions; and (v) other relevant factors. Following receipt of the compliance plans required by subdivision C 3, the ~~Board~~*Director* shall reevaluate the schedule taking into account the information in the compliance plans and the factors in this subdivision, and may modify the schedule as appropriate;

3. A requirement that within nine months after the initial effective date of the general permit, the permittees shall either individually or through the Association submit compliance plans to the Department for approval. The compliance plans shall contain, at a minimum, any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined waste load allocations of all the permittees in the tributary. The compliance plans may rely on the exchange of point source credits in accordance with this article, but not the acquisition of credits through payments authorized by § 62.1-44.19:18, to achieve compliance with the individual and combined waste load allocations in each tributary. The compliance plans shall be updated annually and submitted to the Department no later than February 1 of each year;

4. Such monitoring and reporting requirements as the ~~Board~~*Director* deems necessary to carry out the provisions of this article;

5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters, to secure general permit coverage by filing a registration statement with the Department within a specified period after each effective date of the general permit. The procedure shall also require any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal waters to secure general permit coverage by filing a registration statement with the Department at the time he makes application with the Department for a new discharge or expansion that is subject to an offset or technology-based requirement in § 62.1-44.19:15, and thereafter within a specified period of time after each effective date of the general permit. The general permit shall provide that any facility authorized by a Virginia Pollutant Discharge Elimination System permit and not required by this subdivision to file a registration statement shall be deemed to be covered under the general permit at the time it is issued, and shall file a registration statement with the Department when required by this section. Owners or operators of facilities that are deemed to be permitted under this section shall have no other obligation under the general permit prior to filing a registration statement and securing coverage under the general permit based upon such registration statement;

6. A procedure for efficiently modifying the lists of facilities covered by the general permit where the modification does not change or otherwise alter any waste load allocation or delivery factor adopted pursuant to the Water Quality Management Planning Regulation (9 VAC 25-270) or its successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or incorporating new waste load allocations or delivery factors, including the opportunity for public notice and comment on such modifications or incorporations; and

7. Such other conditions as the ~~Board~~*Director* deems necessary to carry out the provisions of this chapter and Section 402 of the federal Clean Water Act (33 U.S.C. § 1342).

D. The ~~Board~~*Director* shall maintain and make available to the public a current listing, by tributary, of all permittees and permitted facilities under the general permit, together with each permitted facility's total nitrogen and total phosphorus waste load allocations, and total nitrogen and total phosphorus delivery factors.

E. Except as otherwise provided in this article, in the event that there are conflicting or duplicative conditions contained in the general permit and an individual Virginia Pollutant Discharge Elimination System permit, the conditions in the general permit shall control.

§ 62.1-44.19:15. New or expanded facilities.

A. An owner or operator of a new or expanded facility shall comply with the applicable requirements

of this section as a condition of the facility's coverage under the general permit.

1. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design capacity as of July 1, 2005, and will install state-of-the-art nutrient removal technology at the time of the expansion.

2. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005, and will install, at a minimum, biological nutrient removal technology at the time of the expansion.

3. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day up to and including 99,999 gallons per day, or an equivalent load, directly into tidal or nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

4. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install (i) at a minimum, biological nutrient removal technology at any facility authorized to discharge up to and including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters, or up to and including 499,999 gallons per day, or an equivalent load, to nontidal waters; and (ii) state-of-the-art nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters.

B. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this subsection.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the waste load allocations from one or more permitted facilities in the same tributary;

b. Acquisition of nonpoint source load allocations through the use of best management practices acquired through a public or private entity acting on behalf of the land owner. Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or the Virginia tributaries strategies plans, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit; or

c. Acquisition of allocations in accordance with the terms of the general permit or through such other means as may be approved by the Department on a case-by-case basis.

2. The ~~Board~~*Director* shall give priority to allocations acquired in accordance with subdivisions B 1 a and B 1 b. The ~~Board~~*Director* shall approve allocations acquired in accordance with subdivision B 1 c only after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions B 1 a and B 1 b and that such allocations are not reasonably available taking into account timing, cost, and other relevant factors.

C. Until such time as the ~~Board~~*Director* finds that no allocations are reasonably available in an individual tributary, the general permit shall provide for the acquisition of allocations through payments into the Virginia Water Quality Improvement Fund established in § 10.1-2128. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law or the Virginia tributaries strategies plans. The general permit shall base the cost of each pound of allocation on (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the ~~Board~~*Director* may adjust the cost of each pound of allocation based on current costs and cost estimates.

§ 62.1-44.19:16. Technology-based standards and effluent limitations.

A. The Board may establish a technology-based standard less stringent than the applicable standard specified in § 62.1-44.19:15 based on a demonstration by an owner or operator that the specified standard is not technically or economically feasible for the affected facility or that the technology-based standard would require the owner or operator to construct treatment facilities not otherwise necessary to comply with his waste load allocation without reliance on nutrient credit exchanges pursuant to § 62.1-44.19:18.

B. The ~~Board~~*Director* may include technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade. Such limitations shall be based upon the technology installed by the facility and shall be expressed as annual average limitations. Such limitations shall not affect the generation, acquisition, or exchange of allocations or credits pursuant to this article.

§ 62.1-44.19:18. Nutrient allocation compliance and reporting.

A. Each permitted facility shall be in compliance with its individual waste load allocations if: (i) its annual mass load is less than the applicable waste load allocation assigned to the facility in the general permit; (ii) the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision A 1; or (iii) in the event it is unable to meet the individual waste load allocation pursuant to clauses (i) or (ii), the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made in accordance with subdivision A 2; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.

1. A permittee may acquire point source nitrogen or phosphorus credits from one or more permitted facilities only if (i) the credits are generated and applied to a compliance obligation in the same calendar year, (ii) the credits are generated by one or more permitted facilities in the same tributary, (iii) the credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied, and (iv) no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has acquired sufficient credits to satisfy his compliance obligations.

2. A permittee may acquire nitrogen or phosphorus credits through payments made into the Virginia Water Quality Improvement Fund established in § 10.1-2128 only if, no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of the general permit.

B. Until such time as the ~~Board~~*Director* finds that no credits are reasonably available in an individual tributary, the general permit shall provide for the acquisition of nitrogen and phosphorus credits through payments into the Virginia Water Quality Improvement Fund in accordance with subdivision A 2. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law, or the Virginia tributaries strategies plans. The general permit shall base the cost of each nitrogen or phosphorus credit on the average cost of reducing one pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired. Upon each reissuance of the general permit, the ~~Board~~*Director* may adjust the cost of each nitrogen and phosphorus credit based on (i) the current average cost of reducing a pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired and (ii) any additional incentives reasonably necessary to ensure that there is timely and continuing progress toward attaining and maintaining each tributary's combined waste load allocation.

C. On or before February 1, annually, each permittee shall either individually or through the Association file a report with the Department. The report shall identify (i) the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by each permitted facility during the previous calendar year, (ii) the delivered total nitrogen load and delivered total phosphorus load discharged by each permitted facility during the previous year, and (iii) the number of total nitrogen and total phosphorus credits for the previous calendar year to be purchased or sold by the permittee. The report shall contain the certification required by federal and state law and be signed by each permittee for each of the permittee's facilities covered by the general permit.

D. On or before April 1, annually, the Department shall prepare a report containing the annual mass load of total nitrogen and annual mass load of total phosphorus discharged by each permitted facility, the number of point source nitrogen and phosphorus credits for the previous calendar year for sale or purchase by each such facility, and to the extent there are insufficient point source credits available for exchange to provide for full compliance by every permittee, the number of credits to be purchased

pursuant to this section. Upon completion of the report, the Department shall promptly publish notice of the report and make the report available to any person requesting it.

E. On or before July 1, annually, the Department shall publish notice of all nitrogen and phosphorus credit exchanges and purchases for the previous calendar year and make all documents relating to the exchanges and purchases available to any person requesting them.

§ 62.1-44.20. Right to entry to obtain information, etc.

Any duly authorized agent of the ~~Board~~*Director* may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

§ 62.1-44.21. Information to be furnished to Director.

The ~~Board~~*Director* may require every owner to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter. The ~~Board~~*Director* shall not at any time disclose to any person other than appropriate officials of the Environmental Protection Agency pursuant to the requirements of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) any secret formulae, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction.

§ 62.1-44.23. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by the ~~Board~~*Director*, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of this chapter may be compelled in a proceeding instituted in any appropriate court by the ~~Board~~*Director* to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

§ 62.1-44.25. Right to hearing.

Any owner under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 aggrieved by any action of the ~~Board~~*Director* taken without a formal hearing, or by inaction of the ~~Board~~*Director*, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the ~~Board~~*Director*. In cases involving actions of the ~~Board~~*Director*, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

§ 62.1-44.26. Hearings.

A. The hearings held under this chapter may be conducted ~~by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.~~*as an informal fact-finding proceeding held pursuant to § 2.2-4019 at which a hearing officer is present or a formal hearing pursuant to § 2.2-4020.*

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the ~~Board~~*Director*. Depositions may be taken and read as in actions at law.

C. The ~~Board~~*Director* shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the ~~Board~~*Director* in the manner prescribed in § 2.2-4022. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

§ 62.1-44.27. Rules of evidence in hearings.

In all hearings under this chapter:

(1) All relevant and material evidence shall be received, except that (a) the rules relating to privileged communications and privileged topics shall be observed; (b) hearsay evidence shall be received only if the declarant is not readily available as a witness; and (c) secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a witness or document is readily available, the ~~Board~~*Director* or hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence is the more effort should be made to produce the eyewitness or the original document.

(2) All reports of inspectors and subordinates of the ~~Board~~*Director* and other records and documents in the possession of the ~~Board~~*Director* bearing on the case shall be introduced by the ~~Board~~*Director* at the hearing.

(3) Subject to the provisions of subdivision (1) of this section every party shall have the right to cross-examine adverse witnesses and any inspector or subordinate of the ~~Board~~*Director* whose report is in evidence and to submit rebuttal evidence.

(4) The decision of the ~~Board~~*Director* shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.

§ 62.1-44.28. Decisions of the Director in hearings pursuant to §§ 62.1-44.15 and 62.1-44.25.

To be valid and operative, the decision by the ~~Board~~*Director* rendered pursuant to hearings under subdivisions (8a), (8b), and (8c) of §~~§~~ 62.1-44.15 and *under §* 62.1-44.25 must be reduced to writing and contain the explicit findings of fact and conclusions of law upon which the decision of the ~~Board~~*Director* is based and certified copies thereof must be mailed by certified mail to the parties affected by it.

§ 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, 62.1-44.16, 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.

§ 62.1-44.31. Violation of special order or certificate or failure to cooperate with Director.

It shall be unlawful for any owner to fail to comply with any special order adopted by the ~~Board~~*Director*, which has become final under the provisions of this chapter, or to fail to comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate issued by the ~~Board~~*Director* or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the ~~Board~~*Director* under this chapter.

For the purpose of this section, the term "owner" shall mean, in addition to the definition contained in § 62.1-44.3, any responsible corporate officer so designated in the applicable discharge permit.

§ 62.1-44.32. Penalties.

(a) Any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any order of the ~~Board~~*Director*, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed $32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties 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.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 or 10 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.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.

(b) Any person who willfully or negligently violates any provision of this chapter, any regulation or order of the Board *or Director*, any condition of a certificate or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than $2,500 nor more than $32,500, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board *or Director*, any condition of a certificate or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than $5,000 nor more than $50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than

$10,000. Each day of violation of each requirement shall constitute a separate offense.

(c) Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of $1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

(d) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

§ 62.1-44.33. Board to adopt regulations.

The ~~State Water Control Board~~*Virginia Board of Environmental Quality* is empowered and directed to adopt all necessary regulations for the purpose of controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels on all navigable and nonnavigable waters within this Commonwealth. No such regulation shall impose restrictions that are more restrictive than the regulations applicable under federal law; provided, however, the Board may adopt such regulations as are reasonably necessary with respect to: (i) vessels regularly berthed in marinas or other places where vessels are moored, in order to limit or avoid the closing of shellfish grounds; and (ii) no discharge zones. Documented and undocumented boats and vessels are prohibited from discharging into the Chesapeake Bay and the tidal portions of its tributaries sewage that has not been treated by a Coast Guard-approved Marine Sanitation Device (MSD Type 1 or Type 2); however, the discharge of treated or untreated sewage by such boats and vessels is prohibited in areas that have been designated as no discharge zones by the United States Environmental Protection Agency.

The Board shall adopt regulations for designated no discharge zones requiring (i) boats and vessels without installed toilets to dispose of any collected sewage from portable toilets or other containment devices at marina facilities approved by the Department of Health for collection of sewage wastes, or otherwise dispose of sewage in a manner that complies with state law; (ii) all boats and vessels with installed toilets to have a marine sanitation device to allow sewage holding capacity unless the toilets are rendered inoperable; (iii) all houseboats having installed toilets to have a holding tank with the capability of collecting and holding sewage and disposing of collected sewage at a pump-out facility; if the houseboats lack such tank with such capability, the toilet must be removed; (iv) y-valves, macerator pump valves, or any other through-hull fitting valves capable of allowing a discharge of sewage from marine sanitation devices to be secured in the closed position by a device that is not readily removable, including, but not limited to, a numbered container seal such that through-hull sewage is rendered inoperable; and (v) every owner or operator of a marina within a designated no discharge zone to notify boat patrons leasing slips of the sewage discharge restriction in the no discharge zone. As a minimum, notification shall consist of no discharge zone information in the slip rental contract and a sign indicating the area is a designated no discharge zone.

In formulating regulations pursuant to this section, the Board shall consult with the State Department of Health, the Department of Game and Inland Fisheries and the Marine Resources Commission for the purpose of coordinating such regulations with the activities of such agencies.

Violation of such regulations and violations of the prohibitions created by this section on the discharge of treated and untreated sewage from documented and undocumented boats and vessels shall, upon conviction, be a Class 1 misdemeanor. Every law-enforcement officer of this Commonwealth and its subdivisions shall have the authority to enforce the regulations adopted under the provisions of this section and to enforce the prohibitions on the discharge of treated and untreated sewage created by this section.

§ 62.1-44.34:8. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all

other liquid hydrocarbons regardless of specific gravity.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank for the storage, use, or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time a release is reported to the ~~Board~~*Director*.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations promulgated under this article include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored;

3. Septic tanks;

4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this subdivision;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or waste water collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:9. Powers and duties of Director.

The ~~Board~~*Director* is responsible for carrying out the provisions of this article and compatible provisions of federal acts and is authorized to:

1. Enforce the interim prohibition provisions in § 9003 (g) of United States Public Law 98-616. Until state underground storage tank standards promulgated by regulation become effective, the ~~Board~~*Director* shall enforce the federal interim standard which prohibits installation of an underground storage tank for the purpose of storing regulated substances unless such tank:

a. Will prevent releases due to corrosion or structural failure for the operational life of the tank;

b. Is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

c. The material used in the construction or lining of the tank is compatible with the substance to be stored.

2. Exercise general supervision and control over underground storage tank activities in this Commonwealth.

3. Provide technical assistance and advice concerning all aspects of underground storage tank

management.

4. Collect such data and information as may be necessary to conduct the state underground storage tank program.

5. Apply for such federal funds as may become available under federal acts and transmit such funds to appropriate persons.

~~6. Require notification by owners of underground storage tanks in accordance with the provisions of § 9002 of United States Public Law 98-616.~~

~~7. Require notification by owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974; however, the civil penalties specified in § 9006 (d) of United States Public Law 98-616 shall not apply to the foregoing notification requirement.~~

~~8. Promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.~~

~~9. Require the owner or operator of an underground storage tank who is the responsible person for the release to undertake corrective action for any release of petroleum or any other regulated substance when the Board determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs, regardless of when the release occurred; or undertake corrective action for any release of petroleum or any other regulated substance into the environment from an underground storage tank if such action is necessary, in the judgment of the Board, to protect human health and the environment.~~

~~10. Seek recovery of costs incurred, excluding moneys expended from the Virginia Petroleum Storage Tank Fund which are governed by § 62.1-44.34:11, for undertaking corrective action or enforcement action with respect to the release of a regulated substance from an underground storage tank or oil from a facility.~~

§ 62.1-44.34:9.1. Powers and duties of the Virginia Board of Environmental Quality.

The Virginia Board of Environmental Quality shall adopt such regulations as necessary to:

1. Require notification by owners of underground storage tanks in accordance with the provisions of § 9002 of United States Public Law 98-616.

2. Require notification by owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974; however, the civil penalties specified in § 9006 (d) of United States Public Law 98-616 shall not apply to the foregoing notification requirement.

3. Require the owner or operator of an underground storage tank who is the responsible person for the release to undertake corrective action for any release of petroleum or any other regulated substance when the Director determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurred, regardless of when the release occurred; or undertake corrective action for any release of petroleum or any other regulated substance into the environment from an underground storage tank if such action is necessary, in the judgment of the Director, to protect human health and the environment.

4. Seek recovery of costs incurred, excluding moneys expended from the Virginia Petroleum Storage Tank Fund which are governed by § 62.1-44.34:11, for undertaking corrective action or enforcement action with respect to the release of a regulated substance from an underground storage tank or oil from a facility.

5. Allow the Director to carry out his duties and responsibilities with regard to underground storage tanks under this chapter and in accordance with federal laws and regulations.

§ 62.1-44.34:10. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Fund" means the Virginia Petroleum Storage Tank Fund.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of a facility" means any person who owns, operates, rents or otherwise exercises control

over or responsibility for a facility.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees F and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time the release is reported to the ~~Board~~*Director*.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored;

3. Septic tanks;

4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or waste water collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:11. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund is hereby established as a nonlapsing revolving fund to be used by the ~~Board~~*Director* for (i) administering the state regulatory programs authorized by Articles 9, 10 and 11 (§ 62.1-44.34:8 et seq.) of this chapter, (ii) demonstrating financial responsibility, and (iii) other purposes as provided for by applicable provisions of state and federal law. All expenses, costs, civil penalties, charges and judgments recovered by or on behalf of the ~~Board~~*Director* pursuant to Articles 9, 10 and 11 of this chapter, and all moneys received as reimbursement in accordance with applicable provisions of federal law and all fees collected pursuant to §§ 62.1-44.34:19.1 and 62.1-44.34:21, shall be deposited into the Fund. Interest earned on the Fund shall be credited to the Fund. No moneys shall be credited to the balance in the Fund until they have been received by the Fund. The Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund.

The Fund shall be administered by the ~~Board~~*Director* consistent with the provisions of Subtitle I of the federal Solid Waste Disposal Act (P.L. 98-616, § 9001 et seq.) and any approved state underground storage tank program and in accordance with the following provisions:

1. The Fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.

2. Disbursements from the Fund may be made only for the following purposes:

a. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person, in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the per occurrence financial responsibility requirement imposed in subsection B of § 62.1-44.34:12, up to $1 million.

b. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person for compensating third parties, including payment of judgments for bodily injury and property damage caused by the release of petroleum into the environment from an underground storage tank, which are in excess of the per occurrence financial responsibility requirement imposed by subsection B of § 62.1-44.34:12, up to $1 million. The reasonableness and necessity of costs shall be determined based upon documented or actual damage, loss in value, and other relevant factors. Disbursements for third party claims shall be subordinate to disbursements for the corrective action costs in subdivision A 2 a of this section. Compensation for bodily injury and property damage shall be paid only in accordance with final court orders in cases which have been tried to final judgment no longer (i) subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the ~~Board~~*Director* approved the settlement of claim between the owner or operator and the third-party prior to execution by the parties.

c. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed $10 million for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of $2,500 up to $1 million; (ii) for an operator of a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of $5,000 up to $1 million; (iii) for an operator of a facility with a storage capacity from 100,000 gallons to four million gallons, per occurrence costs in excess of $.05 per gallon of aboveground storage capacity up to $1 million; and (iv) for an operator of a facility with a storage capacity greater than four million gallons, per occurrence costs in excess of $200,000 up to $1 million. For purposes of this subdivision (2 c), the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

d. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities exceed $10 million for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than four million gallons, per occurrence costs in excess of $200,000 up to $1 million; (ii) for an operator of a facility with a storage capacity from four million gallons to 20 million gallons, per occurrence costs in excess of $.05 per gallon of aboveground storage capacity up to $1 million; and (iii) an operator of a facility with a storage capacity greater than 20 million gallons shall have no access to the Fund. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for all facilities located within the Commonwealth.

e. Costs incurred by the ~~Board~~*Director* in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10, if such action is necessary, in the judgment of the ~~Board~~*Director*, to protect human health and the environment.

f. Costs of corrective action up to $1 million for any release of petroleum into the environment from underground storage tanks or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 (i) whose owner or operator cannot be determined by the ~~Board~~*Director* within 90 days; or (ii) whose owner or operator is incapable, in the judgment of the ~~Board~~*Director*, of carrying out such corrective action properly.

g. Costs of corrective action incurred by the ~~Board~~*Director* for any release of petroleum into the environment from underground storage tanks which are otherwise specifically listed in exemptions 1 through 9 of the definition of an underground storage tank in § 62.1-44.34:10.

h. Reasonable and necessary per occurrence costs of corrective action incurred for releases reported after December 22, 1989, by the owner or operator in excess of $500 up to $1 million for any release of petroleum into the environment from an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

i. The "cost share" of corrective action with respect to any release of petroleum into the environment

from underground storage tanks undertaken under a cooperative agreement with the Administrator of the United States Environmental Protection Agency, as determined by the Administrator of the United States Environmental Protection Agency in accordance with the provisions of § 9003 (h) (7) (B) of the United States Public Law 98-616 (as amended in 1986 by United States Public Law 99-662).

j. Administrative costs incurred by the ~~Board~~*Director* in carrying out the provisions of regulatory programs authorized by Articles 9, 10, and 11 (§ 62.1-44.34:8 et seq.) of this chapter.

k. All costs and expenses, including but not limited to personnel, administrative, and equipment costs and expenses, directly incurred by the ~~Board~~*Director* or by any other state agency acting at the direction of the ~~Board~~*Director*, in and for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

l. Procurement, maintenance and replenishment of materials, equipment and supplies, in such quantities and at such locations as the ~~Board~~*Director* may deem necessary, for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

m. Costs and expenses, incurred by the ~~Board~~*Director* or by any other state agency, acting at the direction of the ~~Board~~*Director*, for the protection, cleanup and rehabilitation of waterfowl, wildlife, shellfish beds and other natural resources, damaged or threatened by the discharge of oil, owned by the Commonwealth or held in trust by the Commonwealth for the benefit of its citizens.

n. Refund of cash deposits held in escrow pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title and reasonable interest thereon, and refunds of fees collected pursuant to § 62.1-44.34:21 as authorized by this chapter.

o. Administrative costs incurred by the Department of Motor Vehicles in the collection of fees specified in § 62.1-44.34:13.

p. Reasonable and necessary costs incurred by the Virginia Department of Transportation in taking corrective action on property acquired for transportation purposes. If the costs of taking corrective action are recovered, in whole or in part, from any responsible party, the recovery shall be deposited to the Fund.

q. Reasonable and necessary per occurrence costs for releases reported after December 22, 1989, in taking corrective action for any release of petroleum into the environment from an underground storage tank, which are in excess of $5,000 up to $1 million, by any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

3. No funds shall be paid for reimbursement of costs incurred for corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

4. No funds shall be paid for reimbursement of costs incurred prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13.

5. No funds shall be paid for reimbursement of moneys expended for payment of interest or other finance charges on loans which were used for corrective action or containment and cleanup of a release by a person in subdivisions A 3 or A 4 of this section, except for an owner or operator which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided that: (i) the loan moneys have been paid for corrective action that was pre-approved by the ~~Board~~*Director*, (ii) any and all disbursements received from the Fund shall be paid against the loan or for interest and points, and (iii) the payment of interest and points under this subdivision shall be limited to five years from the date the release is reported to the ~~Board~~*Director*. The ~~Board~~*Director* may extend the period for payment of interest and points if, in the judgment of the ~~Board~~*Director*, such action is necessary. The restrictions imposed in clauses (i), (ii) and (iii) shall not apply to loans made prior to June 1, 1992, to an owner or operator exempt from taxation under § 501 (c) (3) of the Internal Revenue Code.

6. No funds shall be paid for penalties, charges or fines imposed pursuant to any applicable local, state or federal law.

7. No funds shall be paid for containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.

8. No funds shall be paid if the operator of the facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.

9. No funds shall be paid if the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the ~~Board~~*Director* as required by applicable statutes, laws or regulations.

10. No funds shall be paid from the Fund unless a reimbursement claim has been filed with the

~~Board~~*Director* within two years from the date the ~~Board~~*Director* issues a site remediation closure letter for that release or July 1, 2000, whichever date is later.

11. The Fund balance shall be maintained at a level sufficient to ensure that the Fund can serve as a financial responsibility demonstration mechanism for the owners and operators of underground storage tanks. Any disbursements made by the ~~Board~~*Director* pursuant to subdivision 2 of this subsection may be temporarily reduced or delayed, in whole or in part, if such action is necessary, in the judgment of the ~~Board~~*Director*, to maintain the Fund balance.

B. The ~~Board~~*Director* shall seek recovery of moneys expended from the Fund for corrective action under this section where the owner or operator of an underground storage tank has violated substantive environmental protection rules and regulations pertaining to underground storage tanks which have been promulgated by the Board.

C. For costs incurred for corrective action as authorized in subdivision A 2 e of this section, the ~~Board~~*Director* shall seek recovery of moneys from the owner or operator of an underground storage tank up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § 62.1-44.34:12 if any, or seek recovery of such costs incurred from any available federal government funds.

D. For costs incurred for corrective action taken resulting from a release from underground storage tanks specified in subdivision A 2 f of this section, the ~~Board~~*Director* shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § 62.1-44.34:12 if any, or seek recovery of such costs incurred from any available federal government funds.

E. The ~~Board~~*Director* shall seek recovery of moneys expended from the Fund for costs incurred for corrective action as authorized in subdivision A 2 g of this section or seek recovery of such costs incurred from any available federal government funds. However, the ~~Board~~*Director* shall not seek recovery of moneys expended from the Fund for costs of corrective action in excess of $500 from the owner or operator of an underground tank exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

F. The ~~Board~~*Director* shall have the right of subrogation for moneys expended from the Fund as compensation for personal injury, death or property damage against any person who is liable for such injury, death or damage.

G. The ~~Board~~*Director* shall promptly initiate an action to recover all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title; however, the ~~Board~~*Director* shall seek recovery from an operator of expenditures from the Fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 2 through A 8 of this section.

§ 62.1-44.34:15. Oil discharge contingency plans.

A. No operator shall cause or permit the operation of a facility in the Commonwealth unless an oil discharge contingency plan applicable to the facility has been filed with and approved by the ~~Board~~*Director*. No operator shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel has been filed with and approved by the ~~Board~~*Director* or a vessel response plan applicable to the tank vessel and approved by the U.S. Coast Guard, pursuant to § 4202 of the federal Oil Pollution Act of 1990.

B. Application for approval of an oil discharge contingency plan shall be made to the ~~Board~~*Director* and shall be accompanied by plans, specifications, maps and such other relevant information as may be required, in scope and detail satisfactory to the ~~Board~~*Director*. An oil discharge contingency plan must conform to the requirements and standards determined by the ~~Board~~*Director* to be necessary to ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time. Each such plan shall provide for the use of the best available technology at the time the plan is submitted for approval. The applicant shall notify the ~~Board~~*Director* immediately of any significant change in the operation or capacity of or the type of product dealt in, stored, handled, transported or transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the ~~Board~~*Director*, but in no event more frequently than once every 36 months. The ~~Board~~*Director*, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The ~~Board~~*Director*, after notice and opportunity for a conference pursuant to § 2.2-4019, may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that

necessitates an amended or supplemented plan;

2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or

3. There has been a significant change in the best available technology since the plan was approved.

D. The ~~Board~~*Director*, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval has been violated.

§ 62.1-44.34:15.1. Regulations for aboveground storage tanks.

The Board shall adopt regulations and develop procedures necessary to prevent pollution of state waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground storage tanks. These regulations shall be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. To the extent that they are consistent with the Board's program, the Board shall incorporate accepted industry practices contained in the American Petroleum Institute publications and other accepted industry standards when developing the regulations contemplated by this section. The regulations shall provide the following:

1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board) and formal tank inspections every five years in accordance with accepted industry practices and procedures approved by the Board. Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the Board;

c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the Board;

d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum by-product contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board). Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures;

c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every five years or equivalent measures established by the Board; and

d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements developed in accordance with subdivision 1 of this section.

3. For aboveground storage tanks existing prior to the effective date of the regulations required by this section, when the results of a tank inspection indicate the need for replacement of the tank bottom, the operator of a facility shall install a release prevention barrier (RPB) capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. The decision to replace an existing tank bottom shall be based on the criteria established by regulations pursuant to this section.

4. The Board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to prevent oil discharges that have been proven in accordance with accepted industry practices and shown to be cost-effective.

5. The Board shall establish criteria for ~~granting~~ *the Director to grant* variances from the requirements of the regulations promulgated pursuant to this section (i) on a case-by-case basis and (ii) by regulation for categories of aboveground storage tanks, except that the ~~Board~~*Director* shall not grant a variance that would result in an unreasonable risk to the public health or the environment. Variances by regulation shall be based on relevant factors such as tank size, use, and location. Within thirty days after the grant of a variance for a facility, the ~~Board~~*Director* shall send written notification of the variance to the chief administrative officer of the locality in which the facility is located.

§ 62.1-44.34:16. Financial responsibility for vessels and facilities.

A. The operator of any tank vessel entering upon state waters shall have a Certificate of Financial Responsibility approved by the U.S. Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990 or shall deposit with the ~~Board~~*Department of Environmental Quality* cash or its equivalent in the amount of $500 per gross ton of such vessel. Any such cash deposits received by the ~~Board~~*Director* shall be held in escrow in the Virginia Petroleum Storage Tank Fund.

B. If the ~~Board~~*Director* determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The ~~Board~~*Director* shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section.

D. The Board is authorized to promulgate regulations requiring operators of facilities to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Operators of facilities shall demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth. Regulations governing the amount of any financial responsibility required shall take into consideration the type, oil storage or handling capacity and location of a facility, the risk of a discharge of oil at that type of facility in the Commonwealth, the potential damage or injury to state waters or the impairment of their beneficial use that may result from a discharge at that type of facility, the potential cost of containment and cleanup at that type of facility, and the nature and degree of injury or interference with general health, welfare and property that may result from a discharge at that type of facility. In no instance shall the financial responsibility requirements for facilities exceed $.05 per gallon of aboveground storage capacity or $5 million for a pipeline. In no instance shall any financial test of self-insurance require the operator of a facility to demonstrate more than $1 of net worth for each dollar of required financial responsibility. If such net worth does not equal the required financial responsibility, then the operator shall demonstrate the minimum required amount by a combination of financial responsibility mechanisms in accordance with subsection E of this section. No governmental agency shall be required to comply with any such regulations.

E. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the ~~Board~~*Director*, or any combination thereof, under the terms the ~~Board~~*Director* may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator of a tank vessel and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions

may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator of a tank vessel or facility whose financial responsibility is accepted by the ~~Board~~*Director* under this subsection shall notify the ~~Board~~*Director* at least 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety. Operators of facilities who are unable to demonstrate financial responsibility in the amounts established pursuant to subsection D may establish an insurance pool pursuant to the requirements of § 62.1-44.34:12 in order to demonstrate such financial responsibility.

F. Acceptance of proof of financial responsibility for tank vessels shall expire:

1. One year from the date on which the ~~Board~~*Director* exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed 30 days before the date of expiration.

G. Operators of facilities shall annually demonstrate and maintain evidence of financial responsibility for containment and cleanup in accordance with regulations adopted by the Board.

H. The ~~Board~~*Director*, after notice and opportunity for hearing, may revoke ~~its~~*his* acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established ~~by the Board~~ pursuant to this section.

I. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or facility or the operator of the tank vessel or facility had made the required cash deposit or possessed evidence of financial responsibility accepted by the ~~Board~~*Director*.

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge.

A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate ~~of the Board~~ or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be deemed necessary in the judgment of the ~~Board~~*Director* to contain and clean up such discharge or threat of such discharge. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the ~~Board~~*Director* may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge, including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating

damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused by such discharge or threat of discharge;

2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;

3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages or costs and expenses of containment and cleanup under this section that are caused by the acts or omissions of such person in rendering such assistance; however, such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge. In addition, a person, other than an operator, who voluntarily, without compensation, and upon the request of a governmental agency, assists in the containment or cleanup of a discharge of oil, shall not be liable for any civil damages resulting from any act or omission on his part in the course of his rendering such assistance in good faith; nor shall any person or any organization exempt from income taxation under § 501 (c) (3) of the Internal Revenue Code who notifies or assists in notifying the membership of such organization to assist in the containment or cleanup of a discharge of oil, voluntarily, without compensation, and upon the request of a government agency, be liable for any civil damages resulting from such notification rendered in good faith.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; however, this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:16 or $10,000,000, whichever is greater; however, there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section.

I. An operator that incurs costs pursuant to subsection B shall have the right to recover all or part of such costs in an action for contribution against any person or persons whose acts or omissions caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs among the parties using such equitable factors as the court deems appropriate.

J. Any person or operator who pays costs or damages pursuant to subsection C shall have the right to recover all or part of such costs or damages in an action for contribution against any person or

persons whose act or omission has caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs or damages among the parties using such equitable factors as the court deems appropriate.

§ 62.1-44.34:19. Reporting of discharge.

A. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the ~~Board~~*Director,* the director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge. Notice will be deemed to have been given under this section for any discharge of oil to state lands in amounts less than twenty-five gallons if the recordkeeping requirements of subsection C of § 62.1-44.34:19.2 have been met and the oil has been cleaned up in accordance with the requirements of this article.

B. Observations and data gathered as a result of the monthly and quarterly inspection activities required by § 62.1-44.34:15.1 (1) (d) shall be maintained on site pursuant to § 62.1-44.34:19.2, and compiled into a summary, on a form developed by the Board, such summary to be submitted to the ~~Board~~*Director* annually on a schedule established by the Board. Should any such observations or data indicate the presence of petroleum hydrocarbons in ground water, the results shall be reported immediately to the ~~Board~~*Director* and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19.

§ 62.1-44.34:19.1. Registration of aboveground storage tanks.

A. The ~~Board~~*Director* shall compile an inventory of facilities with an aboveground storage capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil within the Commonwealth. To develop such an inventory, the Board is hereby authorized to develop regulations regarding registration requirements for facilities and aboveground storage tanks. In adopting such regulations, the Board shall consider whether any registration program required under federal law or regulations is sufficient for purposes of this section.

B. Within ninety days of the effective date of the regulations referred to in subsection A, the operators of a facility shall register the facility with the ~~Board~~*Director* and the local director or coordinator of emergency services appointed pursuant to § 44-146.19, and provide an inventory of aboveground storage tanks at the facility. If the ~~Board~~*Director* determines that registration under federal law or regulations is inadequate for the purpose of compiling its inventory and that additional registration requirements are necessary, the ~~Board~~*Director* is authorized to assess a fee, according to a schedule based on the size and type of the facility or tank, not to exceed $100 per facility or $50 per tank, whichever is less. Such fee shall be paid at the time of registration or registration renewal. Registration shall be renewed every five years or whenever title to a facility or tank is transferred, whichever first occurs.

C. The operator shall, within thirty days after the upgrade, repair, replacement, or closure of an existing tank or installation of a new tank, notify the ~~Board~~*Director* in writing of such upgrade, repair, replacement, closure or installation.

§ 62.1-44.34:19.2. Recordkeeping and access to records and facilities.

A. All records relating to compliance with the requirements of this article shall be maintained by the operator of a facility at the facility or at an alternate location approved by the ~~Board~~*Director* for a period of at least five years. Such records shall be available for inspection and copying by the ~~Board~~*Director* and shall include books, papers, documents and records relating to the daily measurement and inventory of oil stored at a facility, all information relating to tank testing, all records relating to spill events or other discharges of oil from the facility, all supporting documentation for developed contingency plans, and any records required to be kept by regulations of the Board.

B. In the case of a pipeline, all records relating to compliance with the requirements of the Hazardous Liquid Pipeline Safety Act of 1979, all records relating to spill events or other discharges of oil from the pipeline in the Commonwealth, and all supporting documentation for approved contingency plans shall be maintained by the operator of a pipeline at the facility or at an alternate location approved by the ~~Board~~*Director* for a period of at least five years.

C. A record of all discharges of oil to state lands in amounts less than twenty-five gallons shall be established and maintained for a period of five years in accordance with subsections A and B of this section.

D. Every operator of a facility shall, upon reasonable notice, permit at reasonable times and under reasonable circumstances a duly designated official of the political subdivision in which the facility is

located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions to have access to and to copy all information required to be kept in subsections A, B and C.

E. Any duly designated official of the political subdivision in which the facility is located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions may, at reasonable times and under reasonable circumstances, enter and inspect any facility, provided that in nonemergency situations such local official, agent or employee shall be accompanied by the operator or his designee.

§ 62.1-44.34:20. Enforcement and penalties.

A. Upon a finding of a violation of this article or a regulation or term or condition of approval issued pursuant to this article, the ~~Board~~*Director* is authorized to issue a special order requiring any person to cease and desist from causing or permitting such violation or requiring any person to comply with any such provision, regulation or term or condition of approval. Such special orders shall be issued only after notice and an opportunity for hearing except that, if the ~~Board~~*Director* finds that any discharge in violation of this article poses a serious threat to (i) the public health, safety or welfare or the health of animals, fish, botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the ~~Board~~*Director* may issue, without advance notice or hearing, an emergency special order requiring the operator of any facility, vehicle or vessel to cease such discharge immediately, to implement any applicable contingency plan and to effect containment and cleanup. Such emergency special order may also require the operator of a facility to modify or cease regular operation of the facility, or any portion thereof, until the ~~Board~~*Director* determines that continuing regular operation of the facility, or such portion thereof, will not pose a substantial threat of additional or continued discharges. The ~~Board~~*Director* shall affirm, modify, amend or cancel any such emergency order after providing notice and opportunity for hearing to the operator charged with the violation. The notice of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued such a special order or an emergency special order is not complying with the terms thereof, the ~~Board~~*Director* may proceed in accordance with subsection B of this section, 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~~*Director*. If an emergency special order requires modification or cessation of operations, the ~~Board~~*Director* shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

B. In the event of a violation of this article or a regulation, administrative or judicial order, or term or condition of approval issued under this article, or in the event of failure to comply with a special order issued by the ~~Board~~*Director* pursuant to this section, the ~~Board~~*Director* is authorized to proceed by civil action to obtain an injunction of such violation, to obtain such affirmative equitable relief as is appropriate and to recover all costs, damages and civil penalties resulting from such violation or failure to comply. The ~~Board~~*Director* shall be entitled to an award of reasonable attorneys' fees and costs in any action in which it is a prevailing party.

C. Any person who violates or causes or permits to be violated a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, shall be subject to a civil penalty for each such violation as follows:

1. For failing to obtain approval of an oil discharge contingency plan as required by § 62.1-44.34:15, not less than $1,000 nor more than $50,000 for the initial violation, and $5,000 per day for each day of violation thereafter;

2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:16, not less than $1,000 nor more than $100,000 for the initial violation, and $5,000 per day for each day of violation thereafter;

3. For discharging or causing or permitting a discharge of oil into or upon state waters, or owning or operating any facility, vessel or vehicle from which such discharge originates in violation of § 62.1-44.34:18, up to $100 per gallon of oil discharged;

4. For failing to cooperate in containment and cleanup of a discharge as required by § 62.1-44.34:18 or for failing to report a discharge as required by § 62.1-44.34:19, not less than $1,000 nor more than $50,000 for the initial violation, and $10,000 for each day of violation thereafter; and

5. For violating or causing or permitting to be violated any other provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, up to $32,500 for each violation. Each day of violation of each requirement shall constitute a separate offense.

D. Civil penalties may be assessed under this article either by a court in an action brought by the ~~Board~~*Director* pursuant to this section, as specified in § 62.1-44.15, or with the consent of the person charged, in a special order issued by the ~~Board~~*Director*. All penalties shall be paid into the state

treasury and deposited by the State Treasurer into the Virginia Underground Petroleum Storage Tank Fund as established in § 62.1-44.34:11. In determining the amount of any penalty, consideration shall be given to the willfulness of the violation, any history of noncompliance, the actions of the person in reporting, containing and cleaning up any discharge or threat of discharge, the damage or injury to state waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of injury to or interference with general health, welfare and property, and the available technology for preventing, containing, reducing or eliminating the discharge.

E. Any person who knowingly violates, or causes or permits to be violated, a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not more than $100,000, either or both. Any person who knowingly or willfully makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by this article or by administrative or judicial order issued under this article shall be guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years and a fine of not more than $100,000, either or both. In the case of a discharge of oil into or upon state waters:

1. Any person who negligently discharges or negligently causes or permits such discharge shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not more than $50,000, either or both.

2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits such discharge shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than $100,000, either or both.

F. Each day of violation of each requirement shall constitute a separate offense. In the event the violation of this article follows a prior felony conviction under subdivision E 2 of this section, such violation shall constitute a felony and shall be punishable by a term of imprisonment of not less than two years nor more than 10 years and a fine of not more than $200,000, either or both.

G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, a defendant who is not an individual shall be sentenced to pay a fine not exceeding the greater of:

1. $1 million; or

2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of the offense.

H. Any tank vessel entering upon state waters which fails to provide evidence of financial responsibility required by § 62.1-44.34:16, and any vessel from which oil is discharged into or upon state waters, may be detained and held as security for payment to the Commonwealth of any damages or penalties assessed under this section. Such damages and penalties shall constitute a lien on the vessel and the lien shall secure all costs of containment and cleanup, damages, fines and penalties, as the case may be, for which the operator may be liable. The vessel shall be released upon posting of a bond with surety in the maximum amount of such damages or penalties.

§ 62.1-44.34:21. Administrative fees.

A. The ~~Board~~*Director* is authorized to collect from any applicant for approval of an oil discharge contingency plan and from any operator seeking acceptance of evidence of financial responsibility fees sufficient to meet, but not exceed, the costs of the ~~Board~~*Director* related to implementation of § 62.1-44.34:15 as to an applicant for approval of an oil discharge contingency plan and of § 62.1-44.34:16 as to an operator seeking acceptance of evidence of financial responsibility. The Board shall establish by regulation a schedule of fees that takes into account the nature and type of facility and the effect of any prior professional certification or federal review or approval on the level of review required by the ~~Board~~*Director*. All such fees received by the ~~Board~~*Director* shall be used exclusively to implement the provisions of this article.

B. Fees charged an applicant should reflect the average time and complexity of processing approvals in each of the various categories.

C. When adopting regulations for fees, the Board shall take into account the fees charged in neighboring states, and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage. Within six months of receipt of any federal moneys that would offset the costs of implementing this article, the Board shall review the amount of fees set by regulation to determine the amount of fees which should be refunded. Such refunds shall only be required if the fees plus the federal moneys received for the implementation of the program under this article as it applies to facilities exceed the actual cost to the ~~Board~~*Director* of administering the program.

D. On October 1, 1995, and every two years thereafter, the ~~Board~~*Director* shall make an evaluation of the implementation of the fee programs and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House

Committees on Appropriations, Chesapeake and Its Tributaries, and Finance.

§ 62.1-44.34:22. Applicability of Administrative Process Act.

The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and the proceedings of the Board *and the Director* under this article.

§ 62.1-44.34:23. Exceptions.

A. Nothing in this article shall apply to: (i) normal discharges from properly functioning vehicles and equipment, marine engines, outboard motors or hydroelectric facilities; (ii) accidental discharges from farm vehicles or noncommercial vehicles; (iii) accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of 150 gallons or less; (iv) discharges authorized by a valid permit issued by the ~~Board~~*Director* pursuant to § 62.1-44.15 (5) or by the United States Environmental Protection Agency; (v) underground storage tanks regulated under a state program; (vi) releases from underground storage tanks as defined in § 62.1-44.34:8, regardless of when the release occurred; (vii) discharges of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance with federal pipeline safety regulations; or (viii) discharges authorized by the federal on-scene coordinator and the Executive Director or his designee in connection with activities related to the recovery of spilled oil where such activities are undertaken to minimize overall environmental damage due to an oil spill into or on state waters. However, the exception provided in clause (viii) shall in no way reduce the liability of the person who initially spilled the oil which is being recovered.

B. Notwithstanding the exemption set forth in clause (vi) of subsection A of this section, a political subdivision may recover pursuant to subsection C of § 62.1-44.34:18 for a discharge of oil into or upon state waters, lands, or storm drain systems from an underground storage tank regulated under a state program at facilities with an aggregate capacity of one million gallons or greater.

§ 62.1-44.34:25. Virginia Spill Response Council created; purpose; membership.

A. There is hereby created the Virginia Spill Response Council. The purpose of the Council is to (i) improve the Commonwealth's capability to respond in a timely and coordinated fashion to incidents involving the discharge of oil or hazardous materials which pose a threat to the environment, its living resources, and the health, safety, and welfare of the people of the Commonwealth and (ii) provide an ongoing forum for discussions between agencies which are charged with the prevention of, and response to, oil spills and hazardous materials incidents, and those agencies responsible for the remediation of such incidents.

B. The Secretary of Natural Resources and the Secretary of Public Safety, upon the advice of the director of the agency, shall select one representative from each of the following agencies to serve as a member of the Council: Department of Emergency Management, ~~State Water Control Board~~*Virginia Board of Environmental Quality*, Department of Environmental Quality, Virginia Marine Resources Commission, Department of Game and Inland Fisheries, Department of Health, *and* Department of Fire Programs~~, and the Council on the Environment~~.

C. The Secretary of Natural Resources or his designee shall serve as chairman of the Council.

§ 62.1-44.36. Responsibility of Director; formulation of policy.

Being cognizant of the crucial importance of the Commonwealth's water resources to the health and welfare of the people of Virginia, and of the need of a water supply to assure further industrial growth and economic prosperity for the Commonwealth, and recognizing the necessity for continuous cooperative planning and effective state-level guidance in the use of water resources, the ~~State Water Control Board is~~*Virginia Board of Environmental Quality and the Director of the Department of Environmental Quality are* assigned the responsibility for planning the development, conservation and utilization of Virginia's water resources.

The ~~Board~~*Director* shall continue the study of existing water resources of this Commonwealth, means and methods of conserving and augmenting such water resources, and existing and contemplated uses and needs of water for all purposes. Based upon these studies and such policies as have been initiated by the Division of Water Resources, and after an opportunity has been given to all concerned state agencies and political subdivisions to be heard, the ~~Board~~*Director* shall formulate a coordinated policy for the use and control of all the water resources of the Commonwealth and issue a statement thereof. In formulating the Commonwealth's water resources policy, the ~~Board~~*Director* shall, among other things, take into consideration but not be limited to the following principles and policies:

(1) Existing water rights are to be protected and preserved subject to the principle that all of the state waters belong to the public for use by the people for beneficial purposes without waste;

(2) Adequate and safe supplies should be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses;

(3) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof

for the benefit of the Commonwealth as a whole;

(4) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(5) The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged;

(6) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

(7) Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution.

The statement of water resource policy shall be revised from time to time whenever the ~~Board~~*Director* shall determine it to be in the public interest.

The initial statement of state water resource policy and any subsequent revisions thereof shall be furnished by the ~~Board~~*Director* to all state agencies and to all political subdivisions of the Commonwealth.

§ 62.1-44.37. Resolution of conflicts as to water use; public hearings.

The ~~Board~~*Director* shall upon application of any state agency or political subdivision, and may upon its own motion, recommend a plan to resolve any conflict as to actual or proposed water use or other practice directly affecting water use that involves a potential or existing conflict between water use functions under the jurisdiction of different state agencies. If requested by any state agency or political subdivision directly affected, or at the ~~Board~~*Director*'s discretion, the ~~Board~~*Director* shall hold public hearings on such question at which all persons concerned shall be heard.

§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.

A. The ~~Board~~*Director* shall prepare plans and programs for the management of the water resources of this Commonwealth in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of this Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the ~~Board~~*Director*.

B. In preparing river basin plan and program reports enumerated in subsection A of this section, the ~~Board~~*Director* shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic water use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) identify water management problems and alternative water management plans to address such problems; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for all other users.

D. The ~~Board~~*Director* shall establish advisory committees to assist ~~it~~ in the formulation of such plans or programs and in formulating recommendations called for in subsection E of this section. In this connection, the ~~Board~~*Director* may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The ~~Board~~*Director* shall prepare plans or programs and shall include in reports prepared under subsection A of this section recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the ~~Board~~*Director* may deem necessary or desirable for the accomplishment of

plans or programs prepared under subsection B of this section.

F. In addition to the preparation of plans called for in subsection A of this section, the ~~Board~~*Director*, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, to include assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

§ 62.1-44.39. Technical advice and information to be made available.

The ~~Board~~*Director* may make available technical advice and information on water resources to any agency or political subdivision of this Commonwealth, any committee, association or person interested in the conservation or use of water resources, any interstate agency or any agency of the federal government, all for the purpose of assisting in the preparation or effectuation of any plan or program concerning the use or control of the water resources of this Commonwealth in harmony with the state water resources policy or otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this Commonwealth.

§ 62.1-44.40. Governor and General Assembly to be advised; annual report.

The ~~Board~~*Director* shall submit an annual report to the Governor and the General Assembly on or before October 1 of each year on matters relating to the state's water resources policy and the status of the state's water resources, including ground water.

§ 62.1-44.41. *Director* authorized to speak and act for Commonwealth.

(1) In all matters directly related to conservation or use of the Commonwealth's water resources, except as otherwise provided by law, the ~~Board~~*Director* is authorized to speak and act for the Commonwealth in all relations with the federal government or with the government of other states or with interstate agencies or authorities directly concerning conservation or use of the Commonwealth's water resources.

(2) In regard to such matters, the ~~Board, or such person or state agency as may be designated by it,~~ *Director or his designee* may appear and testify for the Commonwealth before any committee of the United States Congress or any branch or agency of the federal government or the legislature or any court or commission of any state.

§ 62.1-44.42. Cooperation with other agencies.

(1) In order to assist the ~~Board~~*Director* in carrying out its functions as provided by law, the ~~Board~~*Director* may:

(a) Call upon the other agencies and political subdivisions of this Commonwealth to furnish or make available to the ~~Board~~*Director* information concerning the water resources of this Commonwealth which such state agencies or political subdivisions have acquired or may acquire in the performance of their functions.

(b) Cooperate with the other agencies or political subdivisions of the Commonwealth in utilizing the services, records and other facilities of such agencies or political subdivisions to the maximum extent practicable.

(2) All officers and employees of the Commonwealth or the political subdivisions of the Commonwealth shall cooperate with the ~~Board~~*Director* in the discharge of ~~its~~*his* duties and in effectuating the water resources policy of the Commonwealth.

(3) Upon receipt and approval by the ~~Board~~*Director* of a claim therefor, any special or extraordinary expense incurred by any other agency or political subdivision of this Commonwealth in cooperating with the ~~Board~~*Director* under subsections (1) and (2) of this section shall be paid to such other agency or political subdivision of the Commonwealth.

§ 62.1-44.43. Additional powers of Director.

In addition to other powers conferred by the foregoing sections, the ~~Board~~*Director of the Department of Environmental Quality* shall have the following powers:

(a) To administer all funds available ~~to the Board~~ for carrying out the purposes and duties prescribed in §§ 62.1-44.36 through 62.1-44.43;

(b) To disburse funds to any department, commission, board, agency, officer or institution of the Commonwealth, or any political subdivision thereof for carrying out such purposes but in the disbursement of such funds the ~~Board~~*Director* shall have no power to include, require or consider membership or nonmembership in any group, organization or political entity of whatsoever nature, and any formula for such distribution; except to the extent as may be required for qualification for such federal funds as may be involved in such distribution;

(c) To apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from federal programs respecting or related to conservation or development of the Commonwealth's water and related land resources;

(d) To act either independently or jointly with any department, commission, board, agency, officer or

institution of the Commonwealth or any political subdivision thereof in order to carry out ~~the Board's~~ *his* powers and duties;

(e) To accept gifts, bequests and any other things to be used for carrying out its purposes, powers and duties.

§ 62.1-44.115. Review of uses by Director; report.

The ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall annually review the uses and development of the waters of the Potomac River, and make such report thereon as it deems advisable to the Governor and to the General Assembly, together with such recommendations as the ~~Board~~*Director* feels are necessary for the protection and full enjoyment of Virginia's riparian rights in such river.

§ 62.1-44.116. Assistance by Director in riparian disputes.

In the event non-Virginia claimants question or seek to abridge the riparian use of the waters of the Potomac River by Virginia riparian owners, the ~~State Water Control Board~~*Director of the Department of Environmental Quality* shall advise and assist such riparian owners in the proper exercise and protection of their rights, giving due consideration to the rights of others and to the wise use of the water, and the ~~Board~~*Director* shall assist in the resolution of conflicts concerning such rights.

§ 62.1-67. Appointment, terms and qualifications of members; alternate members.

The Commission shall consist of three members as follows: one legislative member of the Commission on Intergovernmental Cooperation who resides in the Potomac River drainage basin, appointed by the Joint Rules Committee; one nonlegislative citizen member at large who resides in the Potomac River drainage basin, appointed by the Governor; and the ~~executive director of the State Water Control Board~~*Director of the Department of Environmental Quality*. Appointments to fill vacancies shall be made for the respective unexpired terms. One of the members shall be designated by the Governor as chairman. The Governor and the Joint Rules Committee shall appoint alternate members for their appointees to the Commission, who shall reside in the Potomac River drainage basin, and each alternate shall have power to act in the absence of the person for whom he is alternate. The legislative member ~~and executive director of the State Water Control Board~~ shall serve ~~terms~~*a term* coincident with ~~their terms~~*his term* of office and the member appointed by the Governor shall serve a term of four years. The terms of each alternate shall run concurrently with the term of the member for whom he is alternate. All members may be reappointed.

§ 62.1-69.25. Definitions.

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

"Rappahannock River Basin" means that land area designated as the Rappahannock River Basin by the ~~State Water Control Board~~*Virginia Board of Environmental Quality* pursuant to § 62.1-44.38 and which is also found in the Fourth, Seventeenth, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh and Twenty-eighth Senatorial Districts or the Fifteenth, Eighteenth, Twenty-eighth, Thirtieth, Thirty-first, Fifty-fourth, Fifty-eighth, Eighty-eighth, Ninety-eighth and Ninety-ninth House of Delegates Districts, as those districts exist on January 1, 2002.

§ 62.1-69.36. Definitions.

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

"Basin" means the Roanoke River Basin.

"Roanoke River Basin" means that land area designated as the Roanoke River Basin by the ~~Virginia State Water Control Board~~ *Virginia Board of Environmental Quality*, pursuant to § 62.1-44.38, and the North Carolina Department of Environment and Natural Resources.

§ 62.1-69.45. Definitions.

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

"Rivanna River Basin" means that land area designated as the Rivanna River Basin by the ~~State Water Control Board~~*Virginia Board of Environmental Quality* pursuant to § 62.1-44.38 and that is also found in the Fifteenth, Seventeenth, Twenty-fourth and Twenty-fifth state Senatorial districts or the Twenty-fifth, Fifty-seventh, Fifty-eighth and Fifty-ninth House of Delegates districts, as those districts existed on January 1, 2002.

§ 62.1-73. Appointment and removal of Virginia members of Commission.

In pursuance of Article IV of said compact there shall be three members of the Ohio River Valley Water Sanitation Commission from Virginia. Two members of the Commission shall be appointed by the Governor, subject to confirmation by the General Assembly, from the membership of the ~~State Water Control Board~~*Virginia Board of Environmental Quality* continued under § 62.1-44.7. The terms of the commissioners shall be coincident with that of their terms upon the ~~Commonwealth Water Control Board~~*Virginia Board of Environmental Quality*. All vacancies in the office of any such commissioner shall be filled by appointment by the Governor. ~~The third Virginia~~*One* member of the Commission shall be the Director of the Department of Environmental Quality. Any member of the Commission appointed pursuant to this section who cannot be present at a meeting of the Commission, or at any committee or subcommittee of the Commission, may designate any employee of the Department of Environmental

Quality ~~or a member of the State Water Control Board~~ to attend the meeting and vote on his behalf.

Any commissioner may be removed from office by the Governor.

§ 62.1-85. License required to construct dam; application.

The construction or reconstruction of any such dam as is mentioned in § 62.1-83 shall not be begun until the person, firm, association, corporation, private or municipal, or public utility as defined in § 56-232 proposing to construct or reconstruct the same shall first obtain a license so to do from the State Corporation Commission. The application for such license shall be filed with the Commission and in it all the essential facts shall be stated to enable the Commission to pass upon its merits. A copy of such application shall also be filed by the applicant with the ~~Executive~~ Director *of the Department of Environmental Quality* ~~of the State Water Control Board~~ within ten days after filing such application with the State Corporation Commission. Each application for license shall be accompanied by such maps, plans and other information as may be necessary to give a clear and full understanding of the proposed scheme of development, and of dams, generating stations or other major structures, if any, involved therein.

§ 62.1-104. Definitions.

(1) Except as modified below, the definitions contained in Title 1 shall apply in this chapter.

(2) "Board" means the ~~State Water Control Board~~*Virginia Board of Environmental Quality*.

(3) "Impounding structure" means a man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used for the authorized storage of flood waters for subsequent beneficial use.

(4) "Watercourse" means a natural channel having a well-defined bed and banks and in which water flows when it normally does flow. For the purposes hereof they shall be limited to rivers, creeks, streams, branches, and other watercourses which are nonnavigable in fact and which are wholly within the jurisdiction of the Commonwealth.

(5) "Riparian land" is land which is contiguous to and touches a watercourse. It does not include land outside the watershed of the watercourse. Real property under common ownership and which is not separated from riparian land by land of any other ownership shall likewise be deemed riparian land, notwithstanding that such real property is divided into tracts and parcels which may not bound upon the watercourse.

(6) "Riparian owner" is an owner of riparian land.

(7) "Average flow" means the average discharge of a stream at a particular point and normally is expressed in cubic feet per second. It may be determined from actual measurements or computed from the most accurate information available.

(8) "Diffused surface waters" are those which, resulting from precipitation, flow down across the surface of the land until they reach a watercourse, after which they become parts of streams.

(9) "Floodwaters" means water in a stream which is over and above the average flow.

(10) "Court" means the circuit court of the county or city in which an impoundment is located or proposed to be located.

(11) "Director" means the Director of the Department of Environmental Quality.

§ 62.1-105. Impoundment of diffused surface waters.

Diffused surface waters may be captured and impounded by the owner of the land on which they are present and, when so impounded, become the property of that owner. Such impoundment shall not cause damage to others; however, the owner of land on which an impounding structure as defined in § 10.1-604 is to be located shall comply with the rules and regulations of the ~~State Water Control Board~~*Board*.

§ 62.1-106. When floodwaters may be captured and stored by riparian owners.

Water in watercourses which is over and above the average flow of the stream may, upon approval, be captured and stored by riparian owners for their later use under the following conditions:

(1) As a result of the capture and storage of such waters, there will be no damage to others.

(2) The title to the land on which the impounding structure and the impounded water will rest are in the person or persons requesting the authority.

(3) All costs incident to such impoundment, including devices above and below for indicating average flow, will be borne by the person or persons requesting the authority.

(4) For impoundments with a capacity of more than fifty acre-feet of storage all construction is approved by a licensed professional engineer. For those with capacities of fifty acre-feet, or less, of storage all construction will be approved by a licensed professional engineer or by some other competent person.

(5) Those requesting the authority will insure that the flow below the impoundment is equal to:

(a) At least the average flow when the flow immediately above the impounding structure is greater than the average flow, or

(b) At least the flow immediately above the impounding structure when that flow is equal to or less

than the average flow.

(6) If needed, provision will be made in the impounding structure for an adequate spillway and for means of releasing water to maintain the required flow downstream.

(7) If for the purposes of irrigation, the quantity of water stored (exclusive of foreseeable losses) will not exceed that required for a period of twelve months to irrigate the cleared acreage owned by those participating in the undertaking and lying in the watershed of the stream from which the water is taken.

(8) All structures and equipment incident to such impoundment will be maintained in safe and serviceable condition by the owners and all parts thereof in a watercourse will be removed when no longer required for the purpose.

(9) Priority to the right to store floodwaters, as outlined, will go to upstream riparian owners.

(10) Those impounding floodwaters will, upon request, provide appropriate information concerning the impoundment to the ~~State Water Control Board~~*Director*.

(11) The plans for an impounding structure as defined in § 10.1-604 have the approval of the ~~State Water Control Board~~*Director* and conform to the rules and regulations promulgated by the Board.

§ 62.1-107. Application for leave to store floodwaters; notice to interested persons and to the Director of the Department of Environmental Quality.

Any riparian owner, or riparian owners, desiring to store floodwaters under the conditions specified in § 62.1-106 may apply for leave so to do to the circuit court of the county or city wherein the impounding structure is proposed to be built. Such application shall be made by petition filed in the clerk's office of the court. It shall set forth the name and address of the riparian owner, or owners, the purpose of the proposed impoundment, the desired storage capacity and the basis on which determined, the stream and the point on it from which floodwaters are proposed to be taken, the estimated cost of the project, and an agreement to abide by the provisions of § 62.1-106. It shall be accompanied by a plat or sketch of the riparian property which he or they own and on which is shown the site of the impounding structure and the area to be flooded by the impounded water. The plat or sketch shall include data sufficient to permit the location of the property on the official highway map of the county or a map of the city or town where appropriate. It shall also be accompanied by a plan of the proposed impounding structure on which appears the approval of the plan by a registered civil engineer or registered agricultural engineer, (or other competent person for storage capacities of fifty acre-feet or less) and agreement thereto by the riparian owner. All interested persons shall be given notice of such application by publication in accordance with §§ 8.01-316 and 8.01-317. A copy of the petition, together with a copy of the plat and a copy of the plan, shall be sent by registered mail to the ~~State Water Control Board~~*Director*.

§ 62.1-109. Director of the Department of Environmental Quality to examine petition and report to court.

Upon receipt of a copy of any such petition the ~~Board~~*Director* shall examine the same and report thereon to the court upon the following matters:

(1) The average flow of the stream at the point from which water for storage will be taken.

(2) Whether the proposed project conflicts with any other proposed or likely developments on the watershed.

(3) The effect of the proposed impoundment on pollution abatement to be evidenced by a certified statement together with such other relevant comments as the ~~Board~~*Director* desires to make.

(4) Any other relevant matters which the ~~Board~~*Director* desires to place before the court.

§ 62.1-111. When leave not granted; terms and conditions; appeals.

If, on the report and other evidence, it appears to the court that by granting such leave other riparian owners will be injured, or there are other justifiable reasons for denying the petition, the leave shall not be granted; provided that in no case shall leave be granted if the certified statement from the ~~State Water Control Board~~*Director* filed under § 62.1-109 shows that, in the opinion of ~~such Board~~*the Director*, the reduction of pollution will be impaired or made more difficult. If it be granted, the court shall place the applicant under such terms and conditions as shall seem to it right. An appeal shall lie to the Court of Appeals.

§ 62.1-224. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Board" means the ~~State Water Control Board~~*Virginia Board of Environmental Quality*.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land,

buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Director" means the Director of the Department of Environmental Quality.

"Fund" means the Virginia Water Facilities Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing. The term "local government" includes any authority, commission, district, sanitary board or governmental entity issuing bonds on behalf of an authority, commission, district or sanitary board of an adjoining state that operates a wastewater treatment facility located in Virginia.

"Other entities" means owners of private wastewater treatment facilities.

"Project" means any small water facility project as defined in § 62.1-229 and any wastewater treatment facility located or to be located in the Commonwealth, all or part of which facility serves the citizens of the Commonwealth. The term includes, without limitation, sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

§ 62.1-225. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Facilities Revolving Fund," sums appropriated to the Fund by the General Assembly, sums allocated to the Commonwealth expressly for the purposes of establishing a revolving fund concept through the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended from time to time, all receipts by the Fund from loans made by it to local governments or other entities as permitted by federal law, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the ~~Board~~*Director*, following consultation with the Authority, to direct the distribution of loans or grants from the Fund to particular local governments or other entities and to establish the interest rates and repayment terms of such loans as provided in this chapter. In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the ~~Board~~*Director* for its management services.

§ 62.1-227. Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor and to the ~~Board~~*Director*.

§ 62.1-229. Loans to local governments or other entities.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments or other entities as permitted by federal law to finance or refinance the cost of any project. The local governments or other entities to which loans are to be made, the purposes of the loan, the amount of each such loan, the interest rate thereon and the repayment terms thereof, which may vary between loan recipients, shall be designated in writing by the ~~Board~~*Director* to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be made from the Fund, in the ~~Board's~~*Director's* discretion, to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of onsite sewage disposal problems (small water facility projects), provided that the moneys may be used only for the program and that the onsite sewage disposal systems to be repaired or upgraded are owned by individual citizens of the Commonwealth where (i) public health or water quality concerns are present and (ii) connection to a public sewer system is not feasible because

of location or cost.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between loan recipients. Each loan shall be evidenced by appropriate bonds or notes of the local government or other entity payable to the Fund. The bonds or notes shall have been duly authorized by the local government or other entity and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government or other entity receiving the loan covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the loan from the Fund to the local government or other entity; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. With respect to local governments, levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

C. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the loan from the Fund to the local government or other entity and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government or other entity, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

D. Create and maintain other special funds as required by the Authority; and

E. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in the event of any default in the payment of the loan, including, without limitation, any of the following:

1. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees or other charges;

2. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan from the Fund made in connection with such combination or any part or parts thereof;

3. The maintenance, replacement, renewal and repair of the project; and

4. The procurement of casualty and liability insurance.

All local governments or other entities borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments or other entities, but may be structured as determined by the Authority according to the needs of the contracting local governments or other entities and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan subject to guidelines adopted by the Board.

§ 62.1-229.1. Loans for agricultural best management practices.

Loans may be made from the Fund, in the ~~Board's~~ ~~discretion~~*discretion of the Director of the Department of Environmental Quality*, to an individual for the construction of facilities or structures to implement agricultural best management practices to prevent pollution of state waters, to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the construction of such facilities or structures, or to a financial institution working with a local government to establish such a program. The Board shall develop guidelines for the administration of such loans and shall determine the terms and conditions of any loan from the Fund.

§ 62.1-229.2. Loans for remediation of contaminated properties.

Loans may be made from the Fund, in the ~~Board's~~ ~~discretion~~*discretion of the Director of the Department of Environmental Quality*, to local governments, public authorities, partnerships or corporations for necessary remediation activities undertaken at a brownfield site, as defined in

§ 10.1-1230, for the purpose of reducing ground water contamination or reducing risk to public health. The Board shall develop guidelines for the administration of such loans.

§ 62.1-229.3. Loans for land conservation.

Loans may be made from the Fund, in the ~~Board's discretion~~*discretion of the Director of the Department of Environmental Quality*, to a local government or a holder as defined in § 10.1-1009 for acquiring fee simple title to or a permanent conservation or open-space easement in real property upon the local government or holder establishing to the satisfaction of the ~~Board~~*Director* that the acquisition will (i) protect or improve water quality and prevent the pollution of state waters, and (ii) protect the natural or open-space values of the property or assure its availability for agricultural, forestal, recreational, or open-space use. The ~~Board~~*Director* shall consult with the Department of Conservation and Recreation in making a determination on whether the acquisition will meet the above requirements. Loans for land acquisition may be made only in fiscal years in which all loan requests from local governments for eligible projects as defined in § 62.1-224 have first been satisfied. The Board shall develop guidelines for the administration of such loans.

§ 62.1-230. Grants to local governments.

Subject to any restrictions which may apply to the use of money in the Fund, ~~the Board in its discretion~~*the Director of the Department of Environmental Quality, in his discretion,* may approve the use of money in the Fund to make grants or appropriations to local governments to pay the cost of any project. The ~~Board~~*Director* may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the ~~Board~~*Director*.

§ 62.1-230.1. Loans and grants for regional projects, etc.

In approving loans and grants, the ~~Board~~*Director of the Department of Environmental Quality* shall give preference to loans and grants for projects that will (i) utilize private industry in operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance or (ii) serve two or more local governments to encourage regional cooperation or (iii) both.

§ 62.1-241.1. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of this title.

"Board" means the ~~Virginia Waste Management Board~~*Virginia Board of Environmental Quality*.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications; architectural, engineering, financial, legal or other special services; the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements; site preparation and development, including demolition or removal of existing structures; construction and reconstruction; labor, materials, machinery and equipment; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred before placing the project in service; interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service; necessary expenses incurred in connection with placing the project in service; the funding of accounts and reserves which the Authority may require; and the cost of other items which the Authority determines to be reasonable and necessary.

"Director" means the Director of the Department of Environmental Quality.

"Fund" means the Virginia Solid Waste or Recycling Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing.

"Project" means any solid waste management facility as defined in § 10.1-1400 or a recycling facility for materials identified in a plan adopted pursuant to § 10.1-1411 or both.

§ 62.1-241.2. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Solid Waste or Recycling Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the ~~Board~~*Director*, following consultation with the Authority, to direct the distribution of loans or grants from the Fund to particular local governments and to establish the interest rates and repayment terms of such loans as provided in this chapter. In order to carry out the

administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the ~~Board~~*Director* for its management services.

§ 62.1-241.4. Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as are considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor and to the ~~Board~~*Director*.

§ 62.1-241.6. Loans to local governments.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made; the purposes of the loan; and the amount of each such loan; the interest rate thereon and the repayment terms thereof, which may vary between local governments, shall be designated in writing by the ~~Board~~*Director* to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant perform any of the following:

1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal and premium, if any, and interest on the loan from the Fund to the local government; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or in part, for future increases in rents, rates, fees, or charges;

2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal and premium, if any, and interest on the loan from the Fund to the local government;

3. Create and maintain a special fund or funds for the payment of the principal and premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

4. Create and maintain other special funds as required by the Authority; and

5. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal and premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

b. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities, and systems to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

c. The maintenance, replacement, renewal, and repair of the project; and

d. The procurement of casualty and liability insurance.

All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government subject to guidelines adopted by the Board.

§ 62.1-241.7. Grants to local governments.

Subject to any restrictions which may apply to the use of money in the Fund, the ~~Board~~*Director* in its discretion may approve the use of money in the Fund to make grants to local governments to pay the cost of any project. The ~~Board~~*Director* may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the ~~Board~~*Director*.

§ 62.1-241.8. Loans and grants for regional projects, etc.

In approving loans and grants, the ~~Board~~*Director* shall give preference to loans and grants for projects that will (i) utilize private industry in operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance, or (ii) serve two or more local governments to encourage regional cooperation, or (iii) both.

§ 62.1-241.12. Combined Sewer Overflow Matching Fund established; purposes.

There is hereby established the Combined Sewer Overflow Matching Fund ("Fund") to match federal money for purposes of providing grants to localities for CSO projects. The Fund shall be established out of the sums appropriated from time to time by the General Assembly for the purpose of matching federal funds allocated to Virginia for CSO controls. The Fund, and all income from the investment of moneys held in the Fund and any other sums designated for deposit to the Fund from any source, public or private, shall be set apart as a permanent and perpetual fund, subject to liquidation only upon the solution of Virginia's combined sewer overflow problems, as may be determined by the General Assembly. The Fund shall be administered and managed by the Virginia Resources Authority, subject to the right of the ~~State Water Control Board~~*Director*, following consultation with the Authority, to direct the distribution of grants from the Fund to particular local governments. The ~~State Water Control Board~~*Director* may establish such terms and conditions on any grant as it deems appropriate, and grants shall be disbursed from the Fund by the Virginia Resources Authority in accordance with the written direction of the ~~State Water Control Board~~*Director*.

§ 62.1-242. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the ~~State Water Control Board~~*Virginia Board of Environmental Quality*.

"Director" means the Director of the Department of Environmental Quality.

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Surface water withdrawal permit" means a document issued by the ~~Board~~*Director* evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the ~~Board~~*Director* has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.

A. No surface water withdrawal permit shall be required for (i) any nonconsumptive use, (ii) any water withdrawal of less than 300,000 gallons in any single month, (iii) any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps, (iv) any withdrawal in any area which has not been declared a surface water management area, or (v) any withdrawal from a wastewater treatment system permitted by the ~~State Water Control Board~~*Director* or the Department of Mines,

Minerals and Energy.

B. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the ~~State Water Control Board~~*Director* pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

3. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a surface water management area are in force under regulations adopted by the Board pursuant to § 62.1-249, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the ~~Board~~*Director* may require the release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment.

Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by subdivision 3 of subsection B only at the option of that political subdivision or investor-owned water company.

To qualify for any exemption in subsection B of this section, the political subdivision making the withdrawal, or the political subdivision served by an authority making the withdrawal, shall have instituted a water conservation program approved by the ~~Board~~*Director* which includes: (i) use of water saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water loss reduction program; (iii) a water use education program; and (iv) ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with penalties, during water shortage emergencies. The ~~Board~~*Director* shall review all such water conservation programs to ensure compliance with (i) through (iv) of this paragraph.

C. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the ~~State Water Control Board~~*Director* pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

To qualify for either exemption in subsection C of this section, the beneficial consumptive user shall have instituted a water management program approved by the ~~Board~~*Director* which includes: (i) use of water-saving plumbing; (ii) a water loss reduction program; (iii) a water use education program; and (iv) mandatory reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with other uses exempted under subsection B of this section. The ~~Board~~*Director* shall review all such water management programs to ensure compliance with (i) through (iv) of this paragraph.

D. The ~~Board~~*Director* shall issue certificates for any withdrawals exempted pursuant to subsections B and C of this section. Such certificates shall include conservation or management programs as conditions thereof.

§ 62.1-244. Director may require information from persons withdrawing surface water.

The ~~Board~~*Director* may require any person withdrawing surface water for any purpose in any surface water management area to furnish information with regard to such surface water withdrawal and the use thereof.

§ 62.1-245. Agreements among persons withdrawing surface water.

In the administration of this chapter, the ~~Board~~*Director* shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area. When the ~~Board~~*Director* finds that any such agreement, executed in writing and filed with the ~~Board~~*Director*, is consistent with the intent, purposes and requirements of this chapter, the ~~Board~~*Director* shall approve the agreement following a public hearing. The ~~Board~~*Director* shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and

fisheries management agencies. The ~~Board~~*Director* shall be a party to the agreement. The agreement, until terminated, shall control in lieu of a formal order, rule, regulation or permit issued by the ~~Board~~*Director* under the provisions of this chapter, and shall be deemed to be a case decision under the Administrative Process Act (§ 2.2-4000 et seq.). Any agreement shall specify the amount of water affected thereby.

Any agreement approved by the ~~Board~~*Director* may include conditions which can result in its amendment or termination by the ~~Board~~*Director*, following a public hearing, if the ~~Board~~*Director* finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions may include (i) a determination by the ~~Board~~*Director* that the agreement originally approved ~~by the Board~~ will not further the purposes of this chapter, (ii) a determination by the ~~Board~~*Director* that circumstances have changed such that the agreement originally approved ~~by the Board~~ will no longer further the purposes by this chapter, or (iii) one or more parties to the agreement is not fulfilling its commitments under the agreement. The ~~Board~~*Director* shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

§ 62.1-247. Use of surface water in surface water management area.

After an area has been declared a surface water management area by ~~an order of~~ the Board, no person shall withdraw or attempt to withdraw any surface water, except for withdrawals exempted under § 62.1-243 or made pursuant to a voluntary agreement approved by the ~~Board~~*Director* pursuant to § 62.1-245, without a surface water withdrawal permit issued by the ~~Board~~*Director*.

§ 62.1-248. Permits.

A. Any permit issued by the ~~Board~~*Director* shall include a flow requirement appropriate for the protection of beneficial instream uses. In determining the level of flow in need of protection, the ~~Board~~*Director* shall consider, among other things, recreational and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the ~~Board~~*Director* shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigation measures, and the socioeconomic impacts of such restrictions on the potentially affected water users and on the citizens of the Commonwealth in general.

In ~~its~~*the* permit decision, the ~~Board~~*Director* shall attempt to balance offstream and instream water uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-using group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

Permit conditions may include, but are not limited to, the following: (i) maximum amounts which may be withdrawn, (ii) times of the day or year during which withdrawals may occur, and (iii) requirements for voluntary and mandatory conservation measures.

B. In considering whether to issue, modify, revoke, or deny a permit under this section, the ~~Board~~*Director* shall consider:

1. The number of persons using a stream and the object, extent and necessity of their respective withdrawals or uses;

2. The nature and size of the stream;

3. The types of businesses or activities to which the various uses are related;

4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream water uses;

5. The effects on beneficial uses; and

6. Any other relevant factors.

C. Permits shall be transferable among users, subject to approval by the ~~Board~~*Director*.

D. In developing regulations governing the issuance of permits, the Board shall prioritize among types of users. Domestic and existing uses shall be given the highest priority in the issuance of permits for other beneficial uses. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean Water Act.

§ 62.1-249. Applicability of permit conditions.

A. The Board by regulation shall determine when the level of flow is such that permit conditions in a surface water management area are in force. As a part of this regulation, the Board shall adopt a reasonable system of water-use classification according to classes of beneficial uses. The Board may include ~~provisions for~~*criteria for the Director to use in granting* variances and alternative measures to

prevent undue hardship and ensure equitable distribution of water resources.

B. The regulations may provide that the ~~Board, or the Board's Executive~~ Director, by order may declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

C. The Board may impose such restrictions on one or more classes of water uses as may be necessary to protect the surface water resources of the area from serious harm.

D. Regulations shall provide for the means for a declaration of water shortage to be rescinded.

E. When permit conditions become applicable in a surface water management area, the ~~Board~~*Director* shall notify each permittee by mail or cause notice thereof to be published in a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all permit holders in the area.

§ 62.1-250. State agency review.

Prior to the creation of a surface water management area, or the issuance of a permit within one, the ~~Board~~*Director* shall consult and cooperate 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, and any other interested and affected agencies. Such consultation shall include the need for development of a means in the surface water management area for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the ~~Board~~*Director*. The ~~Board~~*Director* shall assume that if written comments are not submitted by an agency, within the time period, the agency has no comments on the proposed permits.

§ 62.1-251. Cancellation or suspension of permit.

Whenever the ~~Board~~*Director* finds that the holder of a permit is willfully violating any provision of such permit or any other provision of this chapter, the ~~Board~~*Director* may cancel or suspend the permit or impose conditions on its future use in order to prevent future violations. The finding of the ~~Board~~*Director* shall be made in accordance with the Administrative Process Act, § 2.2-4000 et seq.

§ 62.1-252. Penalties; injunctions.

A. Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed $1,000 for each violation. Each day of violation shall constitute a separate offense.

B. With the consent of any person in violation of this chapter, the ~~Board~~*Director* may provide, in an order issued by the ~~Board~~*Director* against the person, for the payment of civil charges. These charges shall be in lieu of civil charges imposed by the court.

C. In order to protect the public interest of the Commonwealth, the ~~Board~~*Director* may seek injunctive relief against any person violating any provision of this chapter.

D. The civil penalties and civil charges provided for in this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the ~~State Water Control Board~~*Virginia Board of Environmental Quality*.

"Director" means the Director of the Department of Environmental Quality.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the ~~Board~~*Director* permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

§ 62.1-256. Duties of ~~Board~~*Director*.

The ~~Board~~*Director* shall have the following duties and powers:

1. To issue ground water withdrawal permits in accordance with regulations adopted by the Board;

2. To issue special orders as provided in § 62.1-268;

3. To study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;

4. To require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the ~~Board~~*Director* such information with regard to such ground water withdrawal and the use thereof as may be necessary to

carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines, Minerals and Energy;

5. To prescribe and enforce requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;

6. To enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of this chapter;

7. To issue special exceptions pursuant to § 62.1-267;

8. To adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and

~~9. To delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § 62.1-268.~~

§ 62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) withdrawals of less than 300,000 gallons a month; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests; (vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals and Energy; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the ~~Board~~*Director*.

§ 62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.

A. Persons holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to said certificate or permit shall file an application for a ground water withdrawal permit on or before December 31, 1992, in order to obtain a permit for withdrawals. The ~~Board~~*Director* shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1987, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the permit shall be issued for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1980, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons holding a certificate of ground water right issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to the certificate shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The ~~Board~~*Director* shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1988, and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons holding a permit to withdraw ground water issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas shall not be required to apply for a ground water withdrawal permit until the expiration of the term of the permit to withdraw ground water as provided in subsection C of § 62.1-266, and may withdraw ground water pursuant to the terms and conditions of the permit to withdraw ground water. Such persons may apply for a ground water withdrawal permit allowing greater withdrawals of ground water than are allowed under an existing permit, and the ~~Board~~*Director* in its discretion may issue a permit for such greater withdrawals, upon consideration of the factors set forth in § 62.1-263.

D. Persons holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, who have not withdrawn ground water prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit. The persons shall file an application for a ground water withdrawal permit on or before December 31, 1995, and may continue withdrawing ground water under the terms and conditions of their certificate or permit until the required ground water withdrawal permit application is acted on by the ~~Board~~*Director*, provided that the ground water withdrawal permit application is filed on or before December 31, 1995. The ~~Board~~*Director* shall issue a ground water withdrawal permit for the total amount of ground water withdrawn and applied to a beneficial use during any consecutive twelve-month period between July 1, 1992, and June 30, 1995, together with (i) such savings as can be demonstrated to have been achieved through water conservation and (ii) such amount as the ~~Board~~*Director* in its discretion deems appropriate upon consideration of the factors set forth in § 62.1-263. This subsection shall not apply to a political subdivision, or an authority serving a political subdivision, holding a permit or certificate for a public water supply well for supplemental water during drought conditions, which shall apply for a ground water withdrawal permit as provided in § 62.1-265.

E. Persons withdrawing ground water for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Groundwater Management Areas on or before July 1, 1992, shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The ~~Board~~*Director* shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1983 and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

F. Persons withdrawing ground water for agricultural or livestock watering purposes, or pursuant to certificates of ground water right or permits to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, may continue such withdrawal until the required permit application is acted on by the ~~Board~~*Director*, provided that the permit application is filed by the appropriate deadline.

G. Persons applying for a ground water withdrawal permit may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage and water conservation as set forth in this section. The ~~Board~~*Director* in its discretion may issue a permit for a greater amount than that which is based on historic usage and water conservation, upon consideration of the factors set forth in § 62.1-263.

H. Failure by any person covered by the provisions of subsection A, B, D or E to file an application for a ground water withdrawal permit prior to the expiration of the applicable period creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the ~~Board~~*Director* shall consider the factors set forth in § 62.1-263.

§ 62.1-261. Permits for existing ground water withdrawals in newly established ground water management areas.

A. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The ~~Board~~*Director* shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the five years preceding said declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons withdrawing ground water for agricultural or livestock watering purposes in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The ~~Board~~*Director* shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the ten-year period preceding such declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, may continue such withdrawal until the required permit application is acted on by the ~~Board~~*Director*, provided that the permit application is filed within the six-month period following the declaration.

D. Persons applying for a ground water withdrawal permit issued pursuant to this section may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage as set forth in this section. The ~~Board~~*Director* in its discretion may issue a permit for a greater amount than that which is based on historic usage, upon consideration of factors set forth in § 62.1-263.

E. Failure by any person covered by the provisions of subsection A or B to file an application for a

ground water withdrawal permit within the six months following the declaration of the ground water management area creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the ~~Board~~*Director* shall consider the factors set forth in § 62.1-263.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ 62.1-260 and 62.1-261, shall include a water conservation and management plan approved by the ~~Board~~*Director*. A water conservation and management plan shall include: (i) use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; and (iv) mandatory reductions during water-shortage emergencies including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The ~~Board~~*Director* shall approve all water conservation plans in compliance with subdivisions (i) through (iv) of this section.

§ 62.1-263. Criteria for issuance of permits.

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the ~~Board~~*Director* may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the ~~Board~~*Director* shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses.

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the ~~Board~~*Director* shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.

§ 62.1-264. Permits for public water supplies.

To ensure that any ground water withdrawal permit issued for a public water supply does not impact a waterworks operation permit issued pursuant to § 32.1-172, the maximum permitted daily withdrawal shall be set by the ~~Board~~*Director* at a level consistent with the requirements and conditions contained in the waterworks operation permit. This section shall not limit the authority of the ~~Board~~*Director* to reduce or eliminate ground water withdrawals by a waterworks if necessary to protect human health or the environment. ~~In~~*The Board, in* promulgating regulations to implement this section, and *the Director,* in administering such regulations and this chapter, ~~the~~ ~~Board~~ shall consult and cooperate with the State Health Department to the end that effective, equitable management of ground water and safeguarding of public health will be attained to the maximum extent possible.

§ 62.1-265. Drought relief wells.

A political subdivision, or an authority serving a political subdivision, holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application for a ground water withdrawal permit on or before December 31, 1992. The ~~Board~~*Director* shall issue ground water withdrawal permits for supplemental drought relief wells for the amount of ground water needed annually to meet human consumption needs as documented by a water conservation and management plan approved by the ~~Board~~*Director* as provided in § 62.1-262. Any ground water withdrawal permits for supplemental drought relief wells shall be issued with the condition that withdrawals may only be made at times that mandatory water use restrictions have been implemented pursuant to the water conservation and management plan.

§ 62.1-266. Ground water withdrawal permits.

A. The ~~Board~~*Director* may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the ~~Board~~*Director* and shall contain such information, consistent with this chapter, as the ~~Board~~*Director*

deems necessary.

C. All ground water withdrawal permits issued by the ~~Board~~*Director* under this chapter shall have a fixed term not to exceed ten years. The term of a ground water withdrawal permit issued by the ~~Board~~*Director* shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the ~~Board~~*Director* is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued ~~by the Board~~ on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the ~~Board~~*Director* 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 permittee has violated any regulation ~~or order~~ of the Board *or order of the Director* pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the ~~Board~~*Director*, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

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

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

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the ~~Executive~~ Director ~~of the Board~~ with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

§ 62.1-267. Issuance of special exceptions.

A. The ~~Board~~*Director* may issue special exceptions to allow the withdrawal of ground water in cases of unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the intended purpose of the Act.

B. In reviewing an application for a special exception, the ~~Board~~*Director* may consider the amount and duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any person requesting a special exception shall submit an application to the ~~Board~~*Director* containing such information as the ~~Board~~*Director* shall require by regulation adopted pursuant to this chapter.

C. Any special exception issued by the ~~Board~~*Director* shall state the terms pursuant to which the applicant may withdraw ground water, including the amount of ground water that may be withdrawn in any period and the duration of the special exception. No special exception shall be issued for a term exceeding ten years.

D. A violation of any term or provision of a special exception shall subject the holder thereof to the same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal permit.

E. The ~~Board~~*Director* shall have the power to amend or revoke any special exception after notice and opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or revocation of a ground water withdrawal permit.

§ 62.1-268. Issuance of special orders.

A. The ~~Board~~*Director* may issue special orders (i) requiring any person who has violated the terms and provisions of a ground water withdrawal permit issued by the ~~Board~~*Director* to comply with such terms and provisions; (ii) requiring any person who has failed to comply with a directive from the ~~Board~~*Director* to comply with such directive; or (iii) requiring any person who has failed to comply

with the provisions of this chapter or any decision of the ~~Board~~*Director* pertaining to ground water to comply with such provision or decision.

B. Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service by certified mail, sent to the last known address of such person, with the time limits counted from the date of such mailing; however, if the ~~Board~~*Director* finds that any such person is grossly affecting or presents an imminent and substantial danger to (i) the public welfare, safety or health; (ii) a public water supply; or (iii) commercial, industrial, agricultural or other beneficial uses, it may issue, without advance notice or hearing, an emergency special order directing the person to cease such withdrawal immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel such emergency special order. If a person who has been issued such a special order or an emergency special order is not complying with the terms thereof, the ~~Board~~*Director* may proceed in accordance with § 62.1-269, 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~~*Director*. If an emergency special order requires cessation of a withdrawal, the ~~Board~~*Director* shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

C. The provisions of this section notwithstanding, the ~~Board~~*Director* may proceed directly under § 62.1-270 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation *of the Board* or order of the ~~Board~~*Director* pertaining to ground water, any condition of a ground water withdrawal permit or any provision of this chapter, the ~~Board~~*Director* may provide, in an order issued by the ~~Board~~*Director* against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-270. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection A of § 62.1-270 and shall not be subject to the provisions of § 2.2-514.

§ 62.1-269. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, standard or requirement of the Board *or the Director* pertaining to ground water, any provision of any ground water withdrawal permit issued by the ~~Board~~*Director*, or any provision of this chapter may be compelled to obey same and to comply therewith in a proceeding instituted by the ~~Board~~*Director* in any appropriate court for injunction, mandamus or other appropriate remedy. The ~~Board~~*Director* shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the ~~Board~~*Director* under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

§ 62.1-270. Penalties.

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the ~~Board~~*Director* pertaining to ground water, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed $25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the person in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

With the consent of any person in violation of this chapter, the ~~Board~~*Director* may provide, in an order issued by the ~~Board~~*Director* against the person, for the payment of civil charges. These charges shall be in lieu of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund.

B. Any person willfully or negligently violating any provision of this chapter, any regulation *of the Board* or order of the ~~Board~~*Director* pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than $2,500 nor more than $25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation ~~or~~ ~~order~~ of the Board *or order of the Director* pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months

and a fine of not less than $5,000 nor more than $50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than $10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

§ 67-401. Permitting process for clean coal projects.

To the extent authorized by federal law, the ~~State Air Pollution Control Board~~*Department of Environmental Quality* shall implement permit processes that facilitate the construction of clean coal projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to processing permit applications for clean coal projects.

2. That §§ 10.1-1184, 10.1-1186.3, and 10.1-1313 of the Code of Virginia are repealed.

3. That it is the intent of the General Assembly to consolidate the State Air Pollution Control Board, the State Water Control Board, and the Waste Management Board into one eleven-member citizen board with the authority to adopt regulations, the Virginia Board of Environmental Quality, and to transfer any other responsibilities of the existing boards, including the authority to issue licenses and permits, to the Department of Environmental Quality.

4. That, as of the effective date of this act, the Director of the Department of Environmental Quality shall be deemed the successor to those rights, responsibilities, and agreements of the State Air Pollution Control Board, the State Water Control Board, and the Waste Management Board that are not otherwise transferred herein to the Virginia Board of Environmental Quality.

5. That all rules and regulations adopted by the State Air Pollution Control Board, the State Water Control Board, and the Waste Management Board and in effect as of the effective date of this act shall remain in full force until altered, amended, or rescinded. All licenses, permits, and certificates granted by the State Air Pollution Control Board, the State Water Control Board, and the Waste Management Board and in effect as of the effective date of this act shall continue on the terms of such license, permit, or certificate until expiration. However, any communications or submissions of information required by or regarding licenses, permits, or certificates shall be made to the Director as of the effective date of this act.

6. That the Virginia Board of Environmental Quality shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.