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SENATE BILL NO. 1402

Offered January 19, 2007

A *BILL to amend and reenact § 62.1-194.3 of the Code of Virginia, relating to protection of the Big Sandy River and its tributaries; penalty.*

Patrons—Puckett and Deeds

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-194.3 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-194.3. Obstructing tributaries of Big Sandy River; dumping refuse, etc., into Big Sandy River or its tributaries.

(a)A. If any person place any dam or other obstruction in any tributary of Big Sandy River so as to prevent the free passage of timber, or any raft or boat, he shall be fined not less than \$50 nor more than \$500; and, upon conviction thereof, the court or judge of the county court shall order the dam or other obstruction to be removed at his expense.

(b)B. It shall also be unlawful for any person to dump, place or put, or cause to be dumped, placed, or put into, upon the banks of or into the channels of Big Sandy River or any of its tributaries, any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material or substance so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of said streams or impede the natural flow of the waters of said river or any of its tributaries or dump, place or put, or cause to be dumped, placed or put any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material, or substance where the same does by natural rainfall or flow of water become washed or otherwise carried into, upon the banks of, or into the channels of, such river or any of its tributaries so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of any of said streams or impede the natural flow of the waters thereof. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into or so allowed to be washed or otherwise so carried into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

(c)C. In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit.

(d)D. This section shall not be construed to restrict the construction or reconstruction of highways, or the construction or reconstruction of the right-of-way of any company subject to the Commonwealth Corporation Commission, or the maintenance thereof in either case, provided the channel thereafter continues to permit a flow of water in such stream at least as large as that prevailing theretofore, provided that if the channel above the point of such work be widened or deepened subsequently then such company may be required by the circuit court of the county on petition of any interested person to change its right-of-way where practicable so as to permit the increased flow of water.

E. *The mixing zone for any discharge into the Levisa Fork or its tributaries that has a total salinity concentration greater than 1.0% shall have a length not greater than three times the width of the Levisa Fork or its tributary at the point of discharge. The provisions of this subsection shall not be construed to restrict the use of anti-icing salt by the Virginia Department of Transportation or any locality maintaining state or local highways and roads to de-ice such highways and roads located in the watershed of the Levisa Fork. Any existing permit, certificate or other authorization authorizing or allowing a mixing zone in conflict with this subsection shall be promptly amended to comply with this subsection. Any discharger who violates this subsection is guilty of a Class 1 misdemeanor. For the purpose of this subsection "mixing zone" means a limited area or volume of water where initial dilution of a discharge takes place and where numeric water quality criteria can be exceeded but designated uses in the water body on the whole are maintained and lethality is prevented.*

F. *No permit, certificate, or other authorization shall be issued or maintained that allows*

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59 polychlorinated biphenyls, also know as "PCBs," to be discharged, dumped, placed or put, or cause to
60 be discharged, dumped, placed or put upon the banks of or into the channels or waters of the Levisa
61 Fork a tributary of the Big Sandy River.
62 **2. That an emergency exists and this act is in force from its passage.**