

VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 842

An Act to amend and reenact §§ 62.1-44.15:5.01 and 62.1-44.15:20 of the Code of Virginia, relating to Virginia Water Protection Permits; multiagency review.

[S 1021]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:5.01 and 62.1-44.15:20 of the Code of Virginia are amended and reenacted as follows:

§ 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 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 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 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. *Any state agency asked to review and provide comments in accordance with clause (ii) shall provide such comments within 45 days of project notification by the Department of Environmental Quality and the Virginia Marine Resources Commission or be deemed to have waived its right to provide comment.*

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.

§ 62.1-44.15:20. Virginia Water Protection Permit.

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

1. Excavate in a wetland;
2. On or after October 1, 2001, conduct the following in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or
3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is consistent with the provisions of the

Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

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

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

E. No locality may impose wetlands permit requirements duplicating state or federal wetlands permit requirements. In addition, no locality shall impose or establish by ordinance, policy, plan, or any other means provisions related to the location of wetlands or stream mitigation in satisfaction of aquatic resource impacts regulated under a Virginia Water Protection Permit or under a permit issued by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act. However, a locality's determination of allowed uses within zoning classifications or its approval of the siting or construction of wetlands or stream mitigation banks or other mitigation projects shall not be affected by the provisions of this subsection.

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