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SENATE BILL NO. 671

Offered January 21, 2014

A *BILL to amend and reenact §§ 62.1-44.3 and 62.1-44.15:20 of the Code of Virginia, relating to the reporting of water use.*

Patron—Favola

Unanimous consent to introduce

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.3 and 62.1-44.15:20 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.3. Definitions.

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

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

"Board" means the State Water Control Board.

"Certificate" means any certificate issued by the Board.

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

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

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.

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

"Lifecycle" means onsite water usage during the following stages of fuel acquisition and consumption, to include at a minimum: fuel acquisition, fuel processing, fuel transportation, power plant construction, and power plant operation, including environmental controls and spent fuel disposal.

"Member" means a member of the Board.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

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

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

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

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

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

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

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

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

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

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

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

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

88 "Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to
89 § 62.1-44.15 (7).

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

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

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

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

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

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

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

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

111 **§ 62.1-44.15:20. Virginia Water Protection Permit.**

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

114 1. Excavate in a wetland;

115 2. On or after October 1, 2001, conduct the following in a wetland:

116 a. New activities to cause draining that significantly alters or degrades existing wetland acreage or
117 functions;

118 b. Filling or dumping;

119 c. Permanent flooding or impounding; or

120 d. New activities that cause significant alteration or degradation of existing wetland acreage or

121 functions; or

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

125 B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water
126 Protection Permit if it has determined that the proposed activity is consistent with the provisions of the
127 Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

128 C. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with and give
129 full consideration to any relevant information contained in the state water supply plan described in
130 subsection A of § 62.1-44.38:1 as well as to the written recommendations of the following agencies: the
131 Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia
132 Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer
133 Services, and any other interested and affected agencies. *Proposed electric generating stations seeking a*
134 *Virginia Water Protection Permit shall submit an estimate of the amount of water that will be*
135 *withdrawn and consumed for the lifecycle of the fuel used by the proposed generating station.* When
136 considering the state water supply plan, nothing shall be construed to limit the operation or expansion of
137 an electric generation facility located on a man-made lake or impoundment built for the purpose of
138 providing cooling water to such facility. Such consultation shall include the need for balancing instream
139 uses with offstream uses. Agencies may submit written comments on proposed permits within 45 days
140 after notification by the Board. If written comments are not submitted by an agency within this time
141 period, the Board shall assume that the agency has no comments on the proposed permit and deem that
142 the agency has waived its right to comment. After the expiration of the 45-day period, any such agency
143 shall have no further opportunity to comment.

144 D. Issuance of a Virginia Water Protection Permit shall constitute the certification required under
145 § 401 of the Clean Water Act.

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

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