

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 54

An Act to amend the Code of Virginia by adding in Title 62.1 a chapter numbered 26, consisting of sections numbered 62.1-271 through 62.1-275, relating to Potomac Aquifer recharge monitoring; laboratory established; SWIFT Project.

[H 2358]

Approved February 19, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 62.1 a chapter numbered 26, consisting of sections numbered 62.1-271 through 62.1-275, as follows:

CHAPTER 26.

POTOMAC AQUIFER RECHARGE MONITORING.

§ 62.1-271. Definitions.

For the purposes of this chapter:

"Committee" means the Potomac Aquifer Recharge Oversight Committee established pursuant to § 62.1-272.

"Department" means the Department of Environmental Quality.

"HRSD" means the Hampton Roads Sanitation District.

"Laboratory" means the Potomac Aquifer Recharge Monitoring Laboratory established pursuant to § 62.1-274.

"SWIFT Project" means the Sustainable Water Initiative for Tomorrow Project conducted by HRSD.

§ 62.1-272. Potomac Aquifer Recharge Oversight Committee.

A. The Potomac Aquifer Recharge Oversight Committee is established as an advisory board and shall consist of eight voting members and two nonvoting members:

1. The State Health Commissioner or his designee, who shall be a full-time employee of the Virginia Department of Health;

2. The Director of the Department of Environmental Quality or his designee, who shall be a full-time employee of the Department;

3. The Executive Director of the Hampton Roads Planning District Commission or his designee, who shall be a full-time employee of the Hampton Roads Planning District Commission;

4. The two Co-Directors of the Potomac Aquifer Recharge Monitoring Laboratory established pursuant to § 62.1-274;

5. The Director of the Occoquan Watershed Monitoring Laboratory, established pursuant to regulations adopted by the Board;

6. A Virginia citizen who is a full-time employee of a water authority or locality that depends on the Potomac Aquifer as a significant source of public drinking water;

7. A Virginia citizen who is a licensed physician engaged in medical practice within the Eastern Virginia Groundwater Management Area;

8. The Regional Administrator of Region III of the U.S. Environmental Protection Agency (EPA) or his designee, who shall be a full-time employee of EPA Region III and shall serve ex officio without voting privileges; and

9. The Director of the Virginia and West Virginia Water Science Center of the U.S. Geological Survey (USGS) or his designee, who shall be a full-time employee of USGS and shall serve ex officio without voting privileges.

The two Virginia citizen members shall be selected on the basis of merit without regard to political affiliation and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the work of the Committee. Each citizen member shall be appointed by the Governor, subject to confirmation by the General Assembly, and shall be appointed for an initial term of two years ending July 1, 2021, and for a term of four years thereafter. Any vacancy of the seat of a citizen member other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term.

B. The Director of the Department shall be the initial chairman of the Committee and shall serve an initial term as chairman until July 1, 2020. The Committee shall elect a chairman to serve thereafter from among any of the eight voting members. The chairman shall be elected to serve a one-year term ending the next July 1 or until his successor is elected. There shall be no limitation on the number of consecutive terms that a committee member may be elected to serve as chairman.

C. The Committee shall convene at least quarterly during the initial three years ending July 1, 2022, and shall convene at least once per calendar year thereafter.

§ 62.1-273. Committee duties and functions.

A. The Committee shall be responsible for ensuring that the SWIFT Project, including its effect on the Potomac Aquifer, is monitored independently.

B. The Committee shall periodically, but not less than every five years, obtain an evaluation of the work of the Potomac Aquifer Recharge Monitoring Laboratory by an independent panel of national experts convened under the auspices of the National Water Research Institute or a similar organization. The evaluation shall address (i) monitoring parameter selection procedures; (ii) analytical methods and screening techniques; (iii) monitoring locations, frequency, results, and interpretation; (iv) modeling activities; and (v) research activities.

C. Additional related activities of the Committee may include:

1. Ensuring that a monitoring program is developed and implemented for monitoring water quality, geological, aquifer pressure, land subsidence, and other SWIFT Project-related impacts;

2. Ensuring independent review of data concerning the quality of the final water produced by the SWIFT Project and upstream process control testing conducted by HRSD in the course of operating the SWIFT Project;

3. Ensuring that a continuous record of monitoring data is maintained and available;

4. Ensuring that projections are made of the effects of the SWIFT Project;

5. Ensuring that the Laboratory operations are separate, distinct, and independent from operations by HRSD;

6. Ensuring that research or modeling on aquifer science, managed aquifer recharge, water reuse treatment, wastewater treatment, and advanced treatment technology is conducted and coordinated with the appropriate stakeholders;

7. Ensuring that data on the status and performance of the SWIFT Project and on any changes in the condition of the aquifer due to the SWIFT Project are synthesized, reported, and submitted at least once a year to the relevant regulatory agencies and made available to localities, water authorities, the general public, and other stakeholders within the Eastern Virginia Groundwater Management Area;

8. Serving as a liaison with stakeholders in the Eastern Virginia Groundwater Management Area;

9. Ensuring that informational material related to the SWIFT Project is readily available to the public;

10. Ensuring that the Laboratory is established to fulfill the above responsibilities;

11. In the event that the Committee finds there to be, related to the SWIFT Project, an imminent danger to the environment, a public water supply, or public health, welfare, or safety, referring such matter to the State Water Control Board for the potential issuance of an emergency order to cease injection or make changes pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 or to the Virginia Department of Health for the potential issuance of an emergency order to cease injection or make changes pursuant to § 32.1-13 or 32.1-175; and

12. In the event that the Committee finds that SWIFT Project water does not meet HRSD standards for tasting events, directing HRSD to discontinue its use of SWIFT Project water in water tasting demonstrations or limited demonstration-scale promotional products.

D. The Committee may establish an advisory council to provide scientific and technical expertise in fields including aquifer science, managed aquifer recharge, wastewater treatment, advanced water treatment technology, water reuse, geology, geochemistry, hydrogeology, and related fields. The Committee may direct the advisory council to synthesize technical information for the Committee, provide recommendations related to monitoring SWIFT Project impacts, and provide other advice and support.

E. The authority granted to the Committee pursuant to this section shall not be construed to prohibit or limit the Department, the State Water Control Board, or the State Health Commissioner from taking any lawful action related to the SWIFT Project.

§ 62.1-274. Potomac Aquifer Recharge Monitoring Laboratory.

A. The Potomac Aquifer Recharge Monitoring Laboratory is established and shall be located at a suitable location in the Hampton Roads region as selected by Old Dominion University (ODU) and Virginia Polytechnic Institute and State University (VPI) and as approved by HRSD.

B. 1. The first Co-Director of the Laboratory (the ODU Director) shall be a member of the faculty of ODU who has appropriate technical and scientific knowledge and shall be appointed by the president of ODU with the concurrence of the Director of the Department and the State Health Commissioner.

2. The ODU Director shall be under the general supervision of the president of ODU and shall carry out specific duties imposed upon him by the president. The ODU Director also shall carry out the duties listed in this section and in so doing shall act at the direction of the Potomac Aquifer Recharge Oversight Committee established by § 62.1-272.

C. 1. The second Co-Director of the Laboratory (the VPI Director) shall be a member of the faculty of VPI who has appropriate technical and scientific knowledge and shall be appointed by the president of VPI with the concurrence of the Director of the Department and the State Health Commissioner.

2. The VPI Director shall be under the general supervision of the president of VPI and shall carry out specific duties imposed upon him by the president. The VPI Director also shall carry out the duties listed in this section and in so doing shall act at the direction of the Committee.

D. The ODU Director and the VPI Director shall coordinate with each other in efficiently and effectively carrying out the duties of the Laboratory.

E. Subject to the approval of the Committee, the Directors may apply for, accept, and expend grants, gifts, donations, and appropriated funds from public or private sources; employ personnel; and enter into contracts to carry out the purposes of this section.

F. The Laboratory shall work cooperatively with relevant technical experts as appropriate and necessary to carry out the purposes of this chapter, including experts at the Virginia Institute of Marine Science, The College of William and Mary in Virginia, Christopher Newport University, the University of Virginia, and other universities, agencies, and departments of the Commonwealth, and the U.S. Geological Survey.

G. The Laboratory shall:

1. Monitor the impact of the SWIFT Project on the Potomac Aquifer by reviewing and synthesizing relevant water quality data;

2. Identify needs and recommend options for filling gaps in the monitoring of the Potomac Aquifer, such as by recommending changes to monitoring locations and protocols;

3. Conduct sampling and analysis of SWIFT Project water and groundwater on a local scale near SWIFT Project injections to verify monitoring data reported by HRSD, and transmit the results of such analyses to the Director of the Department, the State Health Commissioner, and HRSD;

4. Generate, assimilate, interpret, manage, and consolidate data to help inform decision making related to the impact of the SWIFT Project on the Potomac Aquifer. These actions may include the creation of a clearinghouse for aquifer and SWIFT Project data and the synthesis and dissemination of information to various audiences, including the public and the scientific community; and

5. Advance understanding of the Potomac Aquifer, aquifer science, managed aquifer recharge, water reuse treatment technology, and advanced water treatment, through research, analysis, or modeling.

H. The Laboratory shall focus initially on meeting the demonstration-phase needs of the SWIFT Project; however, development of the Laboratory shall be planned in a manner to support its timely and cost-effective expansion to meet the increased needs associated with the phased full-scale implementation of the SWIFT Project.

§ 62.1-275. Cessation of injection.

A. HRSD shall operate and monitor the SWIFT Project advanced treatment process and recharge operations in accordance with any applicable permit or authorization issued by the U.S. Environmental Protection Agency at all times, including during the cessation of injection and the implementation of other required measures, when applicable, in accordance with the terms and conditions of the permitted contingency plan.

B. If HRSD fails to comply with the requirements of any applicable permit or authorization issued by the U.S. Environmental Protection Agency, the State Water Control Board may issue to HRSD a special order or emergency special order pursuant to subdivisions (8a) and (8b) of § 62.1-44.15, or the State Health Commissioner may issue to HRSD an emergency order pursuant to § 32.1-13 or 32.1-175, directing HRSD to cease injections or make necessary corrections to the SWIFT Project's advanced treatment processes or recharge operations. This subsection shall not be construed to prohibit or limit the Department, the State Water Control Board, or the State Health Commissioner from taking any lawful action related to the SWIFT Project.

2. That the Potomac Aquifer Recharge Oversight Committee established by § 62.1-272 of the Code of Virginia, as created by this act, shall request from the Hampton Roads Sanitation District funding sufficient to conduct its activities, including the monitoring of the recharge of the Potomac Aquifer, until July 1, 2022. No later than July 1, 2021, the Committee shall develop a plan for funding such activities beginning July 1, 2022.