CHAPTER 634

An Act to direct compliance with regulations of certain combined sewer overflow outfalls; James River watershed.

[S 1064]

Approved April 2, 2020

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the owner or operator of any combined sewer overflow (CSO) system east of Charlottesville that discharges into the James River watershed shall submit to the Department of Environmental Quality (the Department) the following:*

A. By July 1, 2021, an interim plan detailing all known actions the owner or operator can initiate by July 1, 2022, to address the requirements of any consent special order issued by the State Water Control Board (the Board) to the owner or operator regarding the CSO system; and

B. By July 1, 2024, a final plan updating the interim plan and detailing all actions the owner or operator will take to satisfy all requirements of any consent special order issued by the Board to the owner or operator regarding the CSO system.

Both the interim plan and the final plan shall be divided into discrete projects or phases that may be planned or constructed individually or in combination and shall include for each project or phase (i) an estimated timeline from the start of detailed planning to completion of construction, (ii) an estimated cost, (iii) the projected resultant water quality improvements, and (iv) proposed funding sources. The owner or operator, subject to Department approval, may substitute for any proposed action in either the interim or final plan an alternative action or actions to address the requirements of any consent special order issued by the Board to the owner or operator regarding the CSO system, provided that such alternative is at least as cost-effective as the original proposed action. The Department shall assist the owner or operator in developing both the interim plan and the final plan and in identifying available sources of funding and financing.

§ 2. Any such owner or operator of a CSO system shall:

A. By July 1, 2022, initiate construction and related activities pursuant to the interim plan required in subsection A of § 1;

B. By July 1, 2025, initiate construction and related activities pursuant to the final plan required in subsection B of § 1;

C. By July 1, 2027, complete construction and related activities pursuant to the interim plan required in subsection A of § 1;

D. By July 1, 2030, identify any additional action that is applicable to the owner or operator of a CSO system and is necessary to meet, by 2036, the requirements of the total maximum daily load (TMDL) for bacterial impairments of the James River and its tributaries in the Richmond area, as described in the implementation plan for such TMDL issued by the Department in 2011; and

E. By July 1, 2035, complete construction and related activities pursuant to the final plan required in subsection B of § 1.

§ 3. Any such owner or operator of a CSO system shall report annually to the Department on its progress pursuant to § 1 and § 2, with the first annual report due no later than December 1, 2020, and the final annual report due after completion of (i) the construction activities pursuant to the final plan required in subsection B of § 1 and (ii) additional actions identified in subsection D of § 2. The report, which may be included as part of any annual report required under a consent special order issued by the Department to the owner or operator regarding the CSO system, shall include information on the level and sources of funding and financing such owner or operator has applied to the CSO system in each of the past five fiscal years, as well an assessment of funding needs in future years with a request that appropriation amounts sufficient to carry out the purposes of this act be included in the budget bill. No later than January 1 of each year, the Department shall transmit, with any additional information the Director of the Department determines to be appropriate, the CSO system progress reports to the Chairmen of the Senate Committee on Finance and Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, and the House Committee on Agriculture, Chesapeake and Natural Resources; the Virginia delegation to the Chesapeake Bay Commission; the Secretary of Natural Resources; and the Governor. The Department may recommend extending the deadlines in § 2 to allow adaptive management by the owner or operator due to a natural disaster or other act of God, or because of a lack of available funding and financing.

§ 4. The Governor shall take into account the reports required in § 3 during the preparation of the biennial budget bill and subsequent amendments thereto. The General Assembly may take such reports into account in enacting the general appropriation act and may evaluate the feasibility of the deadlines

in § 2 on a biennial basis beginning in 2022 and modify such deadlines as necessary, taking into account any potential adverse effects on (i) the owner's or operator's bond rating; (ii) the utility rates, fees, or charges assessed by the owner or operator; (iii) any environmental justice community, or owner's or operator's customers living below the federal poverty level; or (iv) any other relevant aspect of the owner's or operator's operations. No sooner than July 1, 2025, and no more frequently than every two years thereafter, the owner or operator may petition the Board for, and the Board may grant, an extension to one or more of the deadlines in § 2 if the Board determines that (a) the General Assembly has not extended such deadline and (b) funding sufficient to meet such deadline has not been secured and the owner or operator has exhausted all reasonable options for securing such funding.

§ 5. Notwithstanding the provisions of § 1 or § 2, no such owner or operator of a CSO system shall be prohibited from seeking modifications to a consent special order with the concurrence of the Department and the Board if alternative actions for protecting water quality are determined to be more cost-effective.