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SENATE BILL NO. 657

Offered January 19, 2022

A BILL to amend and reenact §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-242, and 62.1-255 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 62.1-44.2:1, by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44-6.1, and by adding sections numbered 62.1-248.2 and 62.1-263.1; and to repeal §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia, relating to Air Pollution Control Board and State Water Control Board; authority of Department of Environmental Quality.

Patrons—Stuart and Stanley

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-242, and 62.1-255 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-44.2:1, by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44-6.1, and by adding sections numbered 62.1-248.2 and 62.1-263.1 as follows:

§ 3.2-401. Exclusions from chapter.

This chapter shall not apply to any agricultural activity to which~~:~~ (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1~~;~~ or (ii) a *water-related* permit issued by the ~~State Water Control Board,~~ *Department of Environmental Quality* applies.

§ 10.1-1186.3. Additional powers of Boards and the Department; mediation; alternative dispute resolution.

A. The State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board, in their discretion, *or the Director, in his discretion,* may employ mediation as defined in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve underlying issues, reach a consensus, or compromise on contested issues. An "appropriate case" means any process related to the development of a regulation *by the Board* or the issuance of a permit *by the Department* in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board *or the Department* finds that the use of a mediation or dispute resolution proceeding is in the public interest. The Boards *or the Department* shall consider not using a mediation or dispute resolution proceeding if:

1. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

2. The matter involves or may bear upon significant questions of state policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the ~~Board~~ *Department*;

3. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

4. The matter significantly affects persons or organizations who are not parties to the proceeding;

5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding cannot provide such a record; and

6. The Board *or the Department* must maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution proceeding would interfere with the *Department or the* Board's fulfilling that requirement.

Mediation and alternative dispute resolution as authorized by this section are voluntary procedures which supplement rather than limit other dispute resolution techniques available to the Boards *or the Department*. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only with the consent and participation of the permit applicant and shall be terminated at the request of

the permit applicant.

B. The decision to employ mediation or a dispute resolution proceeding is in a Board's *or the Department's* sole discretion and is not subject to judicial review.

C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board *or the Department*, but may be considered by ~~a Board~~ *the Department* in issuing a permit or *by a Board in* promulgating a regulation.

D. Each Board *and the Department* shall adopt rules and regulations, in accordance with the Administrative Process Act, for the implementation of this section. Such rules and regulations shall include~~:~~ (i) standards and procedures for the conduct of mediation and dispute resolution, including an opportunity for interested persons identified by the ~~Board~~ *Department* to participate in the proceeding; (ii) the appointment and function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work product or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where *the Department or* a Board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation, *respectively*.

Nothing in this section shall create or alter any right, action or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with applicable federal law or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

§ 10.1-1306. Inspections, investigations, etc.

The ~~Board~~ *Department* shall make, or cause to be made, such investigations and inspections and do such other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of the appropriations, study grants, funds, or personnel which are available for the purposes of this chapter, including the achievement and maintenance of such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property and which will foster the comfort and convenience of the people of the Commonwealth and their enjoyment of life and property and which will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions.

§ 10.1-1307. Further powers and duties of Board and Department.

A. The Board shall have the power to control and regulate its internal affairs~~;~~*. The Department shall have the power to* initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in § 10.1-1307.05 and Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, ~~it~~ *the Department* may ~~in its discretion~~ grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant. If local variances are permitted, the ~~Board~~ *Department* shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the ~~Board~~ *Department*, after a hearing, determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, ~~it~~ *the Department* shall have the power to~~:~~ (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce ~~its~~ *the Board's* regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of ~~its~~ orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations ~~and~~*; the Department* in approving variances, control programs, or permits~~,~~*;* and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of

property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located, *except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is proposed has certified that the location and operation of the proposed facility or activity is suitable to the area in which it is located*; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. The ~~Board may designate one of its members, the Director, or a staff assistant to~~ *Department shall* conduct the hearings provided for in this chapter. ~~A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.~~

G. The Board shall not:

1. Adopt any regulation limiting emissions from wood heaters; or

2. Enforce against a manufacturer, distributor, or consumer any federal regulation limiting emissions from wood heaters adopted after May 1, 2014.

H. The ~~Board~~ *Department* shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality.

I. In granting a permit pursuant to this section, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit, pursuant to this section, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

§ 10.1-1307.01. Further duties of Board and Department; localities particularly affected.

A. ~~Before~~ *The Board, before* promulgating a regulation under consideration, *or the Department, before* granting a variance to an existing regulation, or issuing a permit for the construction of a new major source or for a major modification to an existing source, if ~~the Board finds~~ *it is found* that there is a locality particularly affected by the regulation, variance, or permit, ~~the Board~~ shall, *respectively*:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in each locality affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall provide information regarding specific pollutants and the total quantity of each that may be emitted and shall list the type and quantity of any fuels to be used.

2. Mail the notice to the chief elected official and chief administrative officer of and the planning district commission for such locality.

Written comments shall be accepted by the Board for at least 15 days after any hearing on the regulation~~, variance, or permit,~~ unless the Board votes to shorten the period. *Written comments shall be accepted by the Department for at least 15 days after any hearing on the variance or permit.*

B. ~~Before~~ *If the Department finds, before* granting any variance to an existing regulation or issuing any permit for (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas, ~~if the Board finds~~ that there is a locality particularly affected by such variance or permit, the ~~Board~~ *Department* shall:

1. Require the applicant to publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request Board consideration or~~ *as to the date and location of* a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The Department shall post such notice on the Department website and on a Department social media account.

2. Require the applicant to mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality.

Written comments shall be accepted by the ~~Board~~ *Department* for at least 30 days after any hearing

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on such variance or permit, unless the ~~Board votes~~ *Director elects* to shorten the period.

C. For the purposes of this section, the term "locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

§ 10.1-1307.02. Permit for generation of electricity during ISO-declared emergency.

A. As used in this section:

"Emergency generation source" means a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

"ISO-declared emergency" means a condition that exists when the independent system operator, as defined in § 56-576, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the Board pursuant to subsection B.

"Retail customer" has the same meaning ascribed thereto in § 56-576.

B. The Board shall adopt a general permit ~~or permits~~ *regulation* for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during ISO-declared emergencies. Such general permit ~~or permits~~ *regulation* shall include a definition of "emergency" that is compatible with the ISO's emergency operations manual. After adoption of such general permit ~~or permits~~ *regulation*, any amendments to the Board's regulations necessary to carry out the provisions of this section shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

§ 10.1-1307.04. Greenhouse gas emissions inventory.

A. The Department shall conduct a comprehensive statewide baseline and projection inventory of all greenhouse gas (GHG) emissions and shall update such inventory every four years. The Board may adopt regulations necessary to collect from all source sectors data needed *by the Department* to conduct, update, and maintain such inventory.

B. The ~~Board~~ *Department* shall include the inventory in the report required pursuant to subsection H of § 10.1-1307, beginning with the report issued prior to October 1, 2022, and every four years thereafter. The Department shall publish such inventory on its website, showing changes in GHG emissions relative to an estimated GHG emissions baseline case for calendar year 2010.

C. Any information, except emissions data, that is reported to or otherwise obtained by the Department pursuant to this section and that contains or might reveal proprietary information shall be confidential and shall be exempt from the mandatory disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Each owner shall notify the Director or his representative of the existence of proprietary information if he desires the protection provided pursuant to this subsection.

§ 10.1-1308.1. Streamlined permitting process for qualified energy generators.

A. As used in this section:

"Biomass" means organic material that is available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;

3. Animal waste, including manure and slaughterhouse and other processing waste;

4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

5. Crops and trees planted for the purpose of being used to produce energy;

6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

7. Municipal solid waste, excluding tires and medical and hazardous waste.

"Expedited process" means a process that (i) requires the applicant to pay fees to the Commonwealth in connection with the issuance and processing of the permit application that do not exceed $50 and (ii) has a duration, from receipt of a complete permit application until final action by the ~~Board or~~ Department on the application, not longer than 60 days.

"Qualified energy generator" means a commercial facility located in the Commonwealth with the capacity annually to generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced from biomass, and that is sold to an unrelated person or used in a manufacturing process.

B. The ~~Board~~ *Department* shall develop an expedited process for issuing any permit that ~~the Board~~ *it* is required to issue for the construction or operation of a qualified energy generator. The development of the expedited permitting process shall be in accordance with subdivision A 8 of § 2.2-4006; however, if the construction or operation of a qualified energy generator is subject to a major new source review

program required by § 110(a)(2)(C) of the federal Clean Air Act, this section shall not apply.

§ 10.1-1309. Issuance of special orders; civil penalties.

A. The ~~Board~~ *Department* shall have the power to issue special orders to:

(i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist from such pollution;

(ii) owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to and approved by the ~~Board~~ *Department*, to construct such facilities in accordance with or otherwise comply with, such approved plans;

(iii) owners who have violated or failed to comply with the terms and provisions of any ~~Board~~ *Department* order or directive to comply with such terms and provisions;

(iv) owners who have contravened duly adopted and promulgated air quality standards and policies, to cease such contravention and to comply with air quality standards and policies;

(v) require any owner to comply with the provisions of this chapter and any ~~Board~~ *Department* decision; and

(vi) require any person to pay civil penalties of up to $32,500 for each violation, not to exceed $100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by ~~the Board or~~ the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subsection B. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The ~~Board~~ *Department* shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination.

B. Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C below. Should the ~~Board~~ *Department* find that any such owner is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a reasonable attempt to give notice, it shall declare a state of emergency and may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the ~~Board~~ *Department* finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 10.1-1316 or 10.1-1320.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the ~~Board~~ *Department*, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 10.1-1307 shall limit the ~~Board's~~ *Department's* authority to proceed against such owner directly under § 10.1-1316 or 10.1-1320 without the prior issuance of an order, special or otherwise.

§ 10.1-1309.1. Special orders; penalties.

The ~~Board~~ *Department* is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the ~~Board~~ *Department* a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the ~~Board~~ *Department* may deem appropriate. The ~~Board~~ *Department* may require that such plan and instruments be updated as appropriate. The ~~Board~~ *Department* shall give due

consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1310. Decision of Department pursuant to hearing.

Any decision by the ~~Board~~ *Department* rendered pursuant to hearings under § 10.1-1309 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the ~~Board's~~ *Department's* decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10.1-1310.1. Notification of local government.

Upon determining that there has been a violation of this chapter or any regulation promulgated under this chapter or order of the ~~Board~~ *Department*, and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

§ 10.1-1311. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Upon a determination of the amount by the ~~Board~~ *Department*, the ~~Board~~ *Department* shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

§ 10.1-1312. Air pollution control districts.

A. The ~~Board~~ *Department* may create, within any area of the Commonwealth, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the ~~Board~~ *Department* on its own motion or upon request of the governing body or bodies of the area involved.

B. In each district there shall be a local air pollution control committee, the members of which shall be appointed by the ~~Board~~ *Department* from lists of recommended nominees submitted by the respective governing bodies of each locality, all or a portion of which are included in the district. The number of members on each committee shall be in the discretion of the ~~Board~~ *Department*. When a district includes two or more localities or portions thereof, the ~~Board~~ *Department* shall apportion the membership of the committee among the localities, provided that each locality shall have at least one representative on the committee. The members shall not be compensated out of state funds, but may be reimbursed for expenses out of state funds. Localities may provide for the payment of compensation and reimbursement of expenses to the members and may appropriate funds therefore. The portion of such payment to be borne by each locality shall be prescribed by agreement.

C. The local committee is empowered to observe compliance with the regulations of the Board and report instances of noncompliance to the ~~Board~~ *Department*, to conduct educational programs relating to air pollution and its effects, to assist the Department in its air monitoring programs, to initiate and make studies relating to air pollution and its effects, and to make recommendations to the ~~Board~~ *Department*.

D. The governing body of any locality, wholly or partially included within any such district, may appropriate funds for use by the local committee in air pollution control and studies.

§ 10.1-1313. State Advisory Board on Air Pollution.

The ~~Board~~ *Department* is authorized to name qualified persons to a State Advisory Board on Air Pollution.

§ 10.1-1314. Owners to furnish plans, specifications and information.

Every owner which the ~~Board~~ *Department* has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the ~~Board~~ *Department* furnish such plans, specifications and information as may be required by the ~~Board~~ *Department* in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

§ 10.1-1315. Right of entry.

Whenever it is necessary for the purposes of this chapter, the ~~Board~~ *Department* or any ~~member,~~ agent or employee thereof, when duly authorized by the ~~Board~~ *Director*, may at reasonable times enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations.

§ 10.1-1316. Enforcement and civil penalties.

A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any Board regulation or *Department* order, or any permit condition may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under subsection A, any owner violating or failing, neglecting or refusing to obey any Board regulation or *Department* order, any provision of this chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to exceed $32,500 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any Board regulation or *Department* order, or any provision of this chapter, or any permit condition, the ~~Board~~ *Department* may provide, in any order issued by the ~~Board~~ *Department* against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

D. The ~~Board~~ *Department* shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

§ 10.1-1318. Appeal from decision of Department.

A. Any owner aggrieved by a final decision of the ~~Board~~ *Department* under § 10.1-1309, § 10.1-1322 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the ~~Board~~ *Department* under § 10.1-1322 and who has exhausted all available administrative remedies for review of the ~~Board's~~ *Department's* decision, shall be entitled to judicial review of the ~~Board's~~ *Department's* decision in accordance with the provisions of the

Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.

Any owner knowingly violating any provision of this chapter, Board regulation, or *Department* order, or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than $10,000 for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

§ 10.1-1320.1. Duty of attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of *(i)* this chapter ~~or~~, *(ii)* any regulation *of the Board,* or *(iii)* order of the ~~Board~~ *Department*, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

§ 10.1-1322. Permits.

A. Pursuant to regulations adopted by the Board ~~and subject to § 10.1-1322.01~~, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations *of the Board* and orders of the ~~Board~~ *Department* under the provisions of this chapter. To the extent allowed by federal law, any person holding a permit who is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, will reduce the emissions of regulated air pollutants, and meets the requirements of Best Available Control Technology shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subsection to the Department no later than 30 days prior to commencing construction.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of $25 per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The ~~Board~~ *Department* shall ~~also~~ collect permit application fee amounts not to exceed $30,000 from applicants for a permit for a new major stationary source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit

processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the ~~Board~~ *Department*, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

I. [Expired.]

§ 10.1-1322.4. Permit modifications for alternative fuels or raw materials.

Unless required by federal law or regulation, no additional permit or permit modifications shall be required ~~by~~ ~~the~~ ~~Board~~ for the use, by any source, of an alternative fuel or raw material, if the owner demonstrates ~~to~~ ~~the~~ ~~Board~~ that as a result of trial burns at his facility or other facilities or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased. To the extent allowed by federal law or regulation, no demonstration shall be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

§ 10.1-1333. Permitting process for clean coal projects.

To the extent authorized by federal law, the ~~Board~~ *Department of Environmental Quality* shall implement permit processes that facilitate the construction of clean coal projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to processing permit applications for clean coal projects.

§ 15.2-2403.3. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Stormwater service districts; allocation of revenues.

Any town located within a stormwater service district created pursuant to this chapter shall be entitled to any revenues collected within the town pursuant to subdivision 6 of § 15.2-2403, subject to the limitations set forth therein, so long as the town maintains its own municipal separate storm sewer system (MS4) permit issued by the ~~State~~ ~~Water~~ ~~Control~~ ~~Board~~ *Department of Environmental Quality* or maintains its own stormwater service district.

§ 15.2-5101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means an authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152 et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost," as applied to a system, includes the purchase price of the system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority; the cost of improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; any deposit to any bond interest and principal reserve account, start-up costs and reserves and expenditures for operating capital; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement, or construction; administrative expenses and such other expenses as may be necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or construction of any such system and the placing of the system in operation by the authority. Any obligation or expense incurred by an authority in connection with any of the foregoing items of cost and any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system is a part of the cost of such system.

"Cost of improvements" means the cost of constructing improvements and includes the cost of all labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired which are deemed necessary for such construction; interest during any period of disuse during such construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal expenses, plans, specifications; and such other expenses as may be necessary or incident to such construction.

"Federal agency" means the United States of America or any department, agency, instrumentality, or bureau thereof.

"Green roof" means a roof or partially covered roof consisting of plants, soil, or another lightweight growing medium that is installed on top of a waterproof membrane and designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in the Virginia BMP Clearinghouse.

"Improvements" means such repairs, replacements, additions, extensions and betterments of and to a system as an authority deems necessary to place or maintain the system in proper condition for the safe, efficient and economical operation thereof or to provide service in areas not currently receiving such service.

"Owner" includes persons, federal agencies, and units of the Commonwealth having any title or interest in any system, or the services or facilities to be rendered thereby.

"Political subdivision" means a locality or any institution or commission of the Commonwealth of Virginia.

"Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the ~~State Water Control Board~~ *Department of Environmental Quality*, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954 (42 U.S.C. § 2011, et seq.), as amended.

"Refuse collection and disposal system" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and equipment for use in connection therewith.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water and household and industrial wastes as may be present.

"Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

"Sewer system" or "sewage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial wastes or other wastes to a plant of ultimate disposal.

"Stormwater control system" means a structural system of any type that is designed to manage the runoff from land development projects or natural systems designated for such purposes, including, without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating stations, and other plants, structures, and real and personal property used for support of the system.

"System" means any sewage disposal system, sewer system, stormwater control system, water or waste system, and for authorities created under Article 6 (§ 15.2-5152 et seq.) of this chapter, such facilities as may be provided by the authority under § 15.2-5158.

"Unit" means any department, institution or commission of the Commonwealth; any public corporate instrumentality thereof; any district; or any locality.

"Water or waste system" means any water system, sewer system, sewage disposal system, or refuse collection and disposal system, or any combination of such systems. "Water system" means all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, or facilities incident thereto, and any integral part thereof, including water supply systems, water distribution systems, dams and facilities for the generation or transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances, and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof but not including dams or facilities for the generation or transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water.

§ 28.2-1205.1. Coordinated review of water resources projects.

A. Applications for water resources projects that require a Virginia Marine Resources permit and an individual Virginia Water Protection Permit under § 62.1-44.15:20 shall be submitted and processed through a joint application and review process.

B. The Commissioner and the Director of the Department of Environmental Quality, in consultation with the Virginia Institute of Marine Science, the Department of Wildlife Resources, 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 Commission and the Department of Environmental Quality; (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 Commission and the Department of Environmental Quality; (iii) the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* 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 Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall provide each other with notification of its action and any and all supporting information, including any background materials or exhibits used in the application.

§ 46.2-1601. Licensing of dealers of salvage vehicles; fees.

A. It shall be unlawful for any person to engage in business in the Commonwealth as an auto recycler, salvage pool, or vehicle removal operator without first acquiring a license issued by the Commissioner for each such business at each location. The fee for the first such license issued or renewed under this chapter shall be $100 per license year or part thereof. The fee for each additional license issued or renewed under this chapter for the same location shall be $25 per license year or part thereof. However, no fee shall be charged for supplemental locations of a business located within 500 yards of the licensed location.

B. No license shall be issued or renewed for any person unless (i) the licensed business contains at least 600 square feet of enclosed space, (ii) the licensed business is shown to be in compliance with all applicable zoning ordinances, and (iii) the applicant may (a) certify to the Commissioner that the licensed business is permitted under a Virginia Pollutant Discharge Elimination System individual or general permit issued by the ~~State Water Control Board~~ *Department of Environmental Quality* for discharges of storm water associated with industrial activity and provides the permit number(s) from such permit(s) or (b) certify to the Commissioner that the licensed business is otherwise exempt from such permitting requirements. Nothing in this section shall authorize any person to act as a motor vehicle dealer or salesperson without being licensed under Chapter 15 (§ 46.2-1500 et seq.) and meeting all requirements imposed by such chapter.

C. Licenses issued under this section shall be deemed not to have expired if the renewal application and required fees as set forth in subsection A are received by the Commissioner or postmarked not more than 30 days after the expiration date of such license. Whenever the renewal application is received by the Commissioner or postmarked not more than 30 days after the expiration date of such license, the license fees shall be 150 percent of the fees provided for in subsection A.

D. The Commissioner may offer an optional multiyear license for any license set forth in this section. When such option is offered and chosen by the licensee, all fees due at the time of licensing shall be multiplied by the number of years for which the license will be issued.

§ 62.1-44.2:1. Definition; State Water Control Board.

As used in this title, "Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations pursuant to this title, "Board" means the Department of Environmental Quality.

§ 62.1-44.3. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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. *However, when used outside the context of the promulgation of regulations pursuant to this title, "Board" means the Department of Environmental*

Quality.

"Certificate" means any certificate issued by the ~~Board~~ *Department*.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"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.

"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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 62.1-44.3. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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. *However, when used outside the context of the promulgation of regulations pursuant to this title, "Board" means the Department of Environmental Quality.*

"Certificate" means any certificate or permit issued by the ~~Board~~ *Department*.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"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.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements of § 62.1-44.15:34 have been met or (ii) a Virginia Erosion and Sediment Control Program authority after the requirements of § 62.1-44.15:55 have been met.

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

"Member" means a member of the Board.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

1. Owned or operated by a federal entity, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including a special district under state law such as a sewer district,

flood control district, drainage district or similar entity, or a designated and approved management agency under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. Not a combined sewer; and

4. Not part of a publicly owned treatment works.

"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.

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

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

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

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

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

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

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

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

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

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

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

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

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including

but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

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

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

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

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

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

§ 62.1-44.6:1. Permit rationale.

In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.2-106. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in §§ 62.1-44.15 (8b) and 62.1-44.34:20 of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board. The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations. The Executive Director shall be vested with all the authority of the Board when it is not in session, except for the Board's authority ~~to consider permits pursuant to § 62.1-44.15:02 and~~ to issue special orders pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the Executive Director have the authority to adopt or promulgate any regulation.

§ 62.1-44.15:81. Application and preparation of draft certification conditions.

A. Any applicant for a federal license or permit for a natural gas transmission pipeline greater than 36 inches inside diameter subject to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) shall submit a separate application, at the same time the Joint Permit Application is submitted, to the Department containing a description of all activities that will occur in upland areas, including activities in or related to (i) slopes with a grade greater than 15 percent; (ii) karst geology features, including sinkholes and underground springs; (iii) proximity to sensitive streams and wetlands identified by the Department of Conservation and Recreation or the Department of Wildlife Resources; (iv) seasonally high water tables; (v) water impoundment structures and reservoirs; and (vi) areas with highly erodible soils, low pH, and acid sulfate soils. Concurrently with the Joint Permit Application, the applicant shall also submit a detailed erosion and sediment control plan and stormwater management plan subject to Department review and approval.

B. After receipt of an application in accordance with subsection A, the Department shall issue a request for information about how the erosion and sediment control plan and stormwater management plan will address activities in or related to the upland areas identified in subsection A. The response to such request shall include the specific strategies and best management practices that will be utilized by the applicant to address challenges associated with each area type and an explanation of how such strategies and best management practices will ensure compliance with water quality standards.

C. At any time during the review of the application, but prior to issuing a certification pursuant to this article, the Department may issue an information request to the applicant for any relevant additional information necessary to determine (i) if any activities related to the applicant's project in upland areas are likely to result in a discharge to state waters and (ii) how the applicant proposes to minimize water quality impacts to the maximum extent practicable to protect water quality. The information request shall provide a reasonable amount of time for the applicant to respond.

D. The Department shall review the information contained in the application, the response to the information request in subsection B, and any additional information obtained through any information requests issued pursuant to subsection C to determine if any activities described in the application or in any additional information requests (i) are likely to result in a discharge to state waters with the potential to adversely impact water quality and (ii) will not be addressed by the Virginia Water Protection Permit issued for the activity pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.). The Department of Wildlife Resources, the Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture and Consumer Services shall consult with the Department during the review of the application and any additional information obtained through any information requests issued pursuant to subsection B or C. Following the conclusion of its review, the Department shall develop a draft certification or denial. A draft certification, including (i) any additional conditions for activities in upland areas necessary to protect water quality and (ii) a condition that the applicant shall not commence land-disturbing activity prior to approval by the Department of the erosion and sediment control plan and stormwater management plan required pursuant to subsection E, shall be noticed for public comment and potential issuance by the Department ~~or the Board pursuant to § 62.1-44.15:02~~. The Department shall make the information contained in the application and any additional information obtained through any information requests issued pursuant to subsection B or C available to the public.

E. Notwithstanding any applicable annual standards and specifications for erosion and sediment control or stormwater management pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.), the applicant shall not commence land-disturbing activity prior to resolution of any unresolved issues identified in subsection B to the satisfaction of the Department and approval by the Department of an erosion and sediment control plan and stormwater management plan in accordance with applicable regulations. The Department shall act on any plan submittal within 60 days after initial submittal of a completed plan to the Department. The Department may issue either approval or disapproval and shall provide written rationale for its decision. The Department shall act on any plan that has been previously disapproved within 30 days after the plan has been revised and resubmitted for approval.

F. No action by either the Department or the Board on a certification pursuant to this article shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval.

G. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

H. Neither the Department nor the Board shall expressly waive certification of a natural gas transmission pipeline of greater than 36 inches inside diameter under § 401 of the federal Clean Water Act (33 U.S.C. § 1341). The Department or the Board shall act on any certification request within a reasonable period of time pursuant to federal law. Nothing in this section shall be construed to prohibit the Department or the Board from taking action to deny a certification in accordance with the provisions of § 401 of the federal Clean Water Act (33 U.S.C. § 1341).

§ 62.1-44.15:83. Requests for public hearing, hearings, and final decisions procedures.

A. The issuance of a certification pursuant to this article shall be a permit action ~~for purposes of § 62.1-44.15:02~~.

B. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

§ 62.1-242. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations pursuant to this title, "Board" means the Department of Environmental Quality.*

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is

returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Surface water withdrawal permit" means a document issued by the Board evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the Board has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

§ 62.1-248.2. Permit rationale.

In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Agricultural irrigation" means irrigation that is used to support any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations pursuant to this title, "Board" means the Department of Environmental Quality.*

"Department" means the Department of Environmental Quality.

"Eastern Shore Groundwater Management Area" means the ground water management area declared by the Board encompassing the Counties of Accomack and Northampton.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Irrigation" means the controlled application of water through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of the Commonwealth or any other state or country.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 62.1-263.1. Permit rationale.

In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

2. That §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia are repealed.

3. That any permits or orders issued by the Air Pollution Control Board or the State Water Control Board prior to the effective date of this act shall continue in full force and are enforceable by the Department of Environmental Quality.

4. That nothing in this act shall be construed to limit or impact § 3.2-301 or 15.2-2288.6 of the Code of Virginia.