

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 251

An Act to amend and reenact §§ 62.1-44.15:22, as it is currently effective and as it shall become effective, and 62.1-263 of the Code of Virginia, relating to Department of Environmental Quality; data; groundwater and surface water withdrawal permits.

[S 581]

Approved March 28, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:22, as it is currently effective and as it shall become effective, and 62.1-263 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:22. (For contingent expiration date, see Acts 2021, Sp. Sess. I, c. 100) Water withdrawals and preservation of instream flow.

A. Conditions contained in a Virginia Water Protection Permit may include but are not limited to the volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses. *The Board is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit decision. Such data may include information relating to water levels, flow rates, and water quality.*

B. Notwithstanding any other provision, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in § 62.1-44.15:20 C and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of § 62.1-44.15:20 B, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under the other provisions of this section. The application for the Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

§ 62.1-44.15:22. (For contingent effective date, see Acts 2021, Sp. Sess. I, c. 100) Water withdrawals and preservation of instream flow.

A. 1. Conditions contained in a Virginia Water Protection Permit may include the volume of water that may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses. *The Board is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit decision. Such data may include information relating to water levels, flow rates, and water quality.*

2. Every application for a Virginia Water Protection Permit for a surface water withdrawal shall include a (i) water auditing plan and (ii) leak detection and repair plan. Both such plans shall comply with requirements established by the Board in regulations. The Board shall approve every water auditing plan and leak detection and repair plan that complies with such regulatory requirements. Once approved by the Board, such water auditing plan and leak detection and repair plan shall be incorporated by reference as a condition in the Virginia Water Protection Permit. The Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without an approved water auditing plan and an approved leak detection and repair plan.

B. Notwithstanding any other provision of law, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new

§ 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in subsection C of § 62.1-44.15:20 and only for the amount of water necessary to protect public health and safety. Such agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of subsection B of § 62.1-44.15:20, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under other provisions of this section. The application for such Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

§ 62.1-263. Criteria for issuance of permits.

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the Board may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the Board shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses. *The Board is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit application evaluation. Such data may include information relating to water levels, flow rates, and water quality.*

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the Board shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.