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SENATE BILL NO. 446

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 2.2-3705.7, 2.2-4006, 2.2-4007.07, 2.2-4013, 2.2-4014, 2.2-4015, 2.2-4021, 3.2-3602, 3.2-3937, 3.2-5633, 8.01-225, 10.1-404, 10.1-605, 10.1-651, 10.1-659, 10.1-1182, 10.1-1184.1, 10.1-1184.2, 10.1-1185, 10.1-1186, 10.1-1186.2, 10.1-1186.2:1, 10.1-1186.3, 10.1-1186.4, 10.1-1187.1, 10.1-1187.6, 10.1-1197.3, 10.1-1197.9, 10.1-1230, 10.1-1232, 10.1-1234, 10.1-1236, 10.1-1300, 10.1-1400, 10.1-1402.2, 10.1-1408.5, 10.1-1450, 10.1-1454.1, 10.1-1504, 10.1-2117, 10.1-2123, 10.1-2129, 10.1-2131, 10.1-2500, 15.2-924, 15.2-2111, 21-122.1, 28.2-638, 28.2-1100, 28.2-1205, 28.2-1302, 28.2-1403, 29.1-203, 29.1-213, 29.1-214, 32.1-163, 32.1-164, 32.1-176.7, 32.1-233, 36-99.6, 44-146.30, 45.2-1701.1, 45.2-1711, 46.2-1176, 46.2-1179.1, 46.2-1304.1, 54.1-505, 54.1-2300, 54.1-2301, 55.1-2417, 56-585.1, 56-586.1, 58.1-2289, 58.1-3660, 58.1-3664, 62.1-44.3, as it is currently effective and as it shall become effective, 62.1-44.14, 62.1-44.15, as it is currently effective and as it shall become effective, 62.1-44.15:6, 62.1-44.15:7, 62.1-44.15:24, as it is currently effective, 62.1-44.36, 62.1-44.115, 62.1-44.116, 62.1-67, 62.1-69, 62.1-69.25, 62.1-69.36, 62.1-69.45, 62.1-73, 62.1-85, 62.1-104, 62.1-105, 62.1-106, 62.1-107, 62.1-111, 62.1-218, 62.1-224, 62.1-234, 62.1-241.1, 62.1-241.12, 62.1-242, 62.1-243, 62.1-255, and 62.1-273 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 10.1-1183.1; and to repeal §§ 10.1-1184, 10.1-1301 through 10.1-1305, 10.1-1401, and 62.1-44.7 of the Code of Virginia, relating to State Air Pollution Control Board, State Water Control Board, and Virginia Waste Management Board consolidated; Board of Environmental Resources established.

Patron—Stuart

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.7, 2.2-4006, 2.2-4007.07, 2.2-4013, 2.2-4014, 2.2-4015, 2.2-4021, 3.2-3602, 3.2-3937, 3.2-5633, 8.01-225, 10.1-404, 10.1-605, 10.1-651, 10.1-659, 10.1-1182, 10.1-1184.1, 10.1-1184.2, 10.1-1185, 10.1-1186, 10.1-1186.2, 10.1-1186.2:1, 10.1-1186.3, 10.1-1186.4, 10.1-1187.1, 10.1-1187.6, 10.1-1197.3, 10.1-1197.9, 10.1-1230, 10.1-1232, 10.1-1234, 10.1-1236, 10.1-1300, 10.1-1400, 10.1-1402.2, 10.1-1408.5, 10.1-1450, 10.1-1454.1, 10.1-1504, 10.1-2117, 10.1-2123, 10.1-2129, 10.1-2131, 10.1-2500, 15.2-924, 15.2-2111, 21-122.1, 28.2-638, 28.2-1100, 28.2-1205, 28.2-1302, 28.2-1403, 29.1-203, 29.1-213, 29.1-214, 32.1-163, 32.1-164, 32.1-176.7, 32.1-233, 36-99.6, 44-146.30, 45.2-1701.1, 45.2-1711, 46.2-1176, 46.2-1179.1, 46.2-1304.1, 54.1-505, 54.1-2300, 54.1-2301, 55.1-2417, 56-585.1, 56-586.1, 58.1-2289, 58.1-3660, 58.1-3664, 62.1-44.3, as it is currently effective and as it shall become effective, 62.1-44.14, 62.1-44.15, as it is currently effective and as it shall become effective, 62.1-44.15:6, 62.1-44.15:7, 62.1-44.15:24, as it is currently effective, 62.1-44.36, 62.1-44.115, 62.1-44.116, 62.1-67, 62.1-69, 62.1-69.25, 62.1-69.36, 62.1-69.45, 62.1-73, 62.1-85, 62.1-104, 62.1-105, 62.1-106, 62.1-107, 62.1-111, 62.1-218, 62.1-224, 62.1-234, 62.1-241.1, 62.1-241.12, 62.1-242, 62.1-243, 62.1-255, and 62.1-273 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1183.1 as follows:

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by

59 persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

60 As used in this subdivision:

61 "Members of the General Assembly" means each member of the Senate of Virginia and the House of  
62 Delegates and their legislative aides when working on behalf of such member.

63 "Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of policy,  
64 and Cabinet Secretaries; the Assistant to the Governor for Intergovernmental Affairs; and those individuals to  
65 whom the Governor has delegated his authority pursuant to § 2.2-104.

66 "Working papers" means those records prepared by or for a public official identified in this subdivision  
67 for his personal or deliberative use.

68 3. Information contained in library records that can be used to identify (i) both (a) any library patron who  
69 has borrowed or accessed material or resources from a library and (b) the material or resources such patron  
70 borrowed or accessed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access  
71 shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

72 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in  
73 awarding contracts for construction or the purchase of goods or services, and records and automated systems  
74 prepared for the Department's Bid Analysis and Monitoring Program.

75 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the  
76 lists are maintained by the political subdivision itself or by a single fiduciary designated by the political  
77 subdivision.

78 6. Information furnished by a member of the General Assembly to a meeting of a standing committee,  
79 special committee, or subcommittee of his house established solely for the purpose of reviewing members'  
80 annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory  
81 opinions to members on standards of conduct, or both.

82 7. Customer account information of a public utility affiliated with a political subdivision of the  
83 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
84 service provided and the amount of money charged or paid for such utility service.

85 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development  
86 Authority concerning individuals who have applied for or received loans or other housing assistance or who  
87 have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the  
88 Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting  
89 list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing  
90 authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for  
91 housing assistance programs funded by local governments or by any such authority; or (iv) filed with any  
92 local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency  
93 concerning persons who have applied for occupancy or who have occupied affordable dwelling units  
94 established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be  
95 denied.

96 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if  
97 disclosure of such information would have a detrimental effect upon the negotiating position of a governing  
98 body or on the establishment of the terms, conditions, and provisions of the siting agreement.

99 10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant  
100 and animal species, natural communities, caves, and significant historic and archaeological sites if, in the  
101 opinion of the public body that has the responsibility for such information, disclosure of the information  
102 would jeopardize the continued existence or the integrity of the resource. This exclusion shall not apply to  
103 requests from the owner of the land upon which the resource is located.

104 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a proprietary  
105 nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery  
106 game design, development, production, operation, ticket price, prize structure, manner of selecting the  
107 winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or  
108 selections of winning tickets, odds of winning, advertising, or marketing, where such information not been  
109 publicly released, published, copyrighted, or patented. Whether released, published, or copyrighted, all game-  
110 related information shall be subject to public disclosure under this chapter upon the first day of sales for the  
111 specific lottery game to which it pertains.

112 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local  
113 retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust  
114 established by one or more local public bodies to invest funds for post-retirement benefits other than  
115 pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of  
116 visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the board of visitors of The  
117 College of William and Mary in Virginia, acting pursuant to § 23.1-2803, or by the Virginia College Savings  
118 Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition of a security or other  
119 ownership interest in an entity, where such security or ownership interest is not traded on a governmentally

120 regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses  
 121 prepared for the board of visitors of the University of Virginia, prepared for the board of visitors of The  
 122 College of William and Mary in Virginia, prepared by the retirement system, a local finance board or board  
 123 of trustees, or the Virginia College Savings Plan, or provided to the retirement system, a local finance board  
 124 or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality of the future  
 125 value of such ownership interest or the future financial performance of the entity and (ii) have an adverse  
 126 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local  
 127 finance board or board of trustees, the board of visitors of the University of Virginia, the board of visitors of  
 128 The College of William and Mary in Virginia, or the Virginia College Savings Plan. Nothing in this  
 129 subdivision shall be construed to prevent the disclosure of information relating to the identity of any  
 130 investment held, the amount invested, or the present value of such investment.

131 13. Financial, medical, rehabilitative, and other personal information concerning applicants for or  
 132 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under  
 133 Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

134 14. Information held by the Virginia Commonwealth University Health System Authority pertaining to  
 135 any of the following: an individual's qualifications for or continued membership on its medical or teaching  
 136 staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to  
 137 a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for  
 138 construction or the purchase of goods or services; information of a proprietary nature produced or collected  
 139 by or for the Authority or members of its medical or teaching staffs; financial statements not publicly  
 140 available that may be filed with the Authority from third parties; the identity, accounts, or account status of  
 141 any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in  
 142 connection with its strategic planning and goals; the determination of marketing and operational strategies  
 143 where disclosure of such strategies would be harmful to the competitive position of the Authority; and  
 144 information of a proprietary nature produced or collected by or for employees of the Authority, other than the  
 145 Authority's financial or administrative records, in the conduct of or as a result of study or research on  
 146 medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction  
 147 with a governmental body or a private concern, when such information has not been publicly released,  
 148 published, copyrighted, or patented. This exclusion shall also apply when such information is in the  
 149 possession of Virginia Commonwealth University.

150 15. Information held by the Department of Environmental Quality; ~~the State Water Control Board, the~~  
 151 ~~State Air Pollution Control Board, or the Virginia Waste Management Board of Environmental Resources~~  
 152 relating to (i) active federal environmental enforcement actions that are considered confidential under federal  
 153 law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
 154 information shall be disclosed after a proposed sanction resulting from the investigation has been proposed to  
 155 the director of the agency. This subdivision shall not be construed to prevent the disclosure of information  
 156 related to inspection reports, notices of violation, and documents detailing the nature of any environmental  
 157 contamination that may have occurred or similar documents.

158 16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel  
 159 itinerary, including vehicle identification data or vehicle enforcement system information; video or  
 160 photographic images; Social Security or other identification numbers appearing on driver's licenses; credit  
 161 card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

162 17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification  
 163 number, state sales tax number, home address and telephone number, personal and lottery banking account  
 164 and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific  
 165 retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won  
 166 shall be disclosed. If the value of the prize won by the winner exceeds \$10 million, the information described  
 167 in clause (ii) shall not be disclosed unless the winner consents in writing to such disclosure.

168 18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person  
 169 regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary  
 170 action by the Board for a positive test result.

171 19. Information pertaining to the planning, scheduling, and performance of examinations of holder records  
 172 pursuant to the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.) prepared by or for the  
 173 State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder  
 174 records.

175 20. Information held by the Virginia Department of Emergency Management or a local governing body  
 176 relating to citizen emergency response teams established pursuant to an ordinance of a local governing body  
 177 that reveal the name, address, including ~~e-mail~~ email address, telephone or pager numbers, or operating  
 178 schedule of an individual participant in the program.

179 21. Information held by state or local park and recreation departments and local and regional park  
 180 authorities concerning identifiable individuals under the age of 18 years. However, nothing in this

181 subdivision shall operate to prevent the disclosure of information defined as directory information under  
182 regulations implementing the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless  
183 the public body has undertaken the parental notification and opt-out requirements provided by such  
184 regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such  
185 person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has  
186 restricted or denied such access. For such information of persons who are emancipated, the right of access  
187 may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the  
188 information may waive, in writing, the protections afforded by this subdivision. If the protections are so  
189 waived, the public body shall open such information for inspection and copying.

190 22. Information submitted for inclusion in the Statewide Alert Network administered by the Department  
191 of Emergency Management that reveal names, physical addresses, email addresses, computer or internet  
192 protocol information, telephone numbers, pager numbers, other wireless or portable communications device  
193 information, or operating schedules of individuals or agencies, where the release of such information would  
194 compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert  
195 Network.

196 23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

197 24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local  
198 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system),  
199 or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

200 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on  
201 the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to  
202 the execution of such investment strategies or the selection or termination of such managers, if disclosure of  
203 such information would have an adverse impact on the financial interest of the retirement system or the  
204 Virginia College Savings Plan; and

205 b. Trade secrets provided by a private entity to the retirement system or the Virginia College Savings Plan  
206 if disclosure of such records would have an adverse impact on the financial interest of the retirement system  
207 or the Virginia College Savings Plan.

208 For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity  
209 shall make a written request to the retirement system or the Virginia College Savings Plan:

210 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which  
211 protection from disclosure is sought;

212 (2) Identifying with specificity the data or other materials for which protection is sought; and

213 (3) Stating the reasons why protection is necessary.

214 The retirement system or the Virginia College Savings Plan shall determine whether the requested  
215 exclusion from disclosure meets the requirements set forth in subdivision b.

216 Nothing in this subdivision shall be construed to prevent the disclosure of the identity or amount of any  
217 investment held or the present value and performance of all asset classes and subclasses.

218 25. Information held by the Department of Corrections made confidential by former § 53.1-233.

219 26. Information maintained by the Department of the Treasury or participants in the Local Government  
220 Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the Department to  
221 establish accounts in accordance with § 2.2-4602.

222 27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust  
223 Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that  
224 access shall not be denied to the person who is the subject of the information.

225 28. Information maintained in connection with fundraising activities by the Veterans Services Foundation  
226 pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social  
227 security number or other identification number appearing on a driver's license or other document issued under  
228 Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction, or credit card or  
229 bank account data of identifiable donors, except that access shall not be denied to the person who is the  
230 subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure  
231 of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the  
232 donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or  
233 donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the  
234 identities of sponsors providing grants to or contracting with the foundation for the performance of services  
235 or other work or (ii) the terms and conditions of such grants or contracts.

236 29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the  
237 training of state prosecutors or law-enforcement personnel, where such information is not otherwise available  
238 to the public and the disclosure of such information would reveal confidential strategies, methods, or  
239 procedures to be employed in law-enforcement activities or materials created for the investigation and  
240 prosecution of a criminal case.

241 30. Information provided to the Department of Aviation by other entities of the Commonwealth in

242 connection with the operation of aircraft where the information would not be subject to disclosure by the  
 243 entity providing the information. The entity providing the information to the Department of Aviation shall  
 244 identify the specific information to be protected and the applicable provision of this chapter that excludes the  
 245 information from mandatory disclosure.

246 31. Information created or maintained by or on the behalf of the judicial performance evaluation program  
 247 related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

248 32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are  
 249 discussed by any sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child  
 250 abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child sexual abuse  
 251 response teams established pursuant to § 15.2-1627.5, or (iii) individual cases of abuse, neglect, or  
 252 exploitation of adults as defined in § 63.2-1603 are discussed by multidisciplinary teams established pursuant  
 253 to §§ 15.2-1627.5 and 63.2-1605. The findings of any such team may be disclosed or published in statistical  
 254 or other aggregated form that does not disclose the identity of specific individuals.

255 33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the  
 256 Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target companies,  
 257 specific allocation of resources and staff for marketing activities, and specific marketing activities that would  
 258 reveal to the Commonwealth's competitors for economic development projects the strategies intended to be  
 259 deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth.  
 260 The executive summaries of the strategic plan, marketing plan, and operational plan shall not be redacted or  
 261 withheld pursuant to this subdivision.

262 34. Information discussed in a closed session of the Physical Therapy Compact Commission or the  
 263 Executive Board or other committees of the Commission for purposes set forth in subsection E of § 54.1-  
 264 3491.

265 35. Information held by the Commonwealth of Virginia Innovation Partnership Authority (the Authority),  
 266 an advisory committee of the Authority, or any other entity designated by the Authority, relating to (i)  
 267 internal deliberations of or decisions by the Authority on the pursuit of particular investment strategies prior  
 268 to the execution of such investment strategies and (ii) trade secrets, as defined in the Uniform Trade Secrets  
 269 Act (§ 59.1-336 et seq.), provided by a private entity to the Authority, if such disclosure of records pursuant  
 270 to clause (i) or (ii) would have an adverse impact on the financial interest of the Authority or a private entity.

271 36. Personal information provided to or obtained by the Virginia Lottery in connection with the voluntary  
 272 exclusion program administered pursuant to § 58.1-4015.1.

273 37. Personal information provided to or obtained by the Virginia Lottery concerning the identity of any  
 274 person reporting prohibited conduct pursuant to § 58.1-4043.

275 **§ 2.2-4006. Exemptions from requirements of this article.**

276 A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register  
 277 Act shall be exempted from the operation of this article:

278 1. Agency orders or regulations fixing rates or prices.

279 2. Regulations that establish or prescribe agency organization, internal practice or procedures, including  
 280 delegations of authority.

281 3. Regulations that consist only of changes in style or form or corrections of technical errors. Each  
 282 promulgating agency shall review all references to sections of the Code of Virginia within their regulations  
 283 each time a new supplement or replacement volume to the Code of Virginia is published to ensure the  
 284 accuracy of each section or section subdivision identification listed.

285 4. Regulations that are:

286 a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency  
 287 discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's  
 288 effective date;

289 b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is  
 290 involved; or

291 c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not  
 292 differ materially from those required by federal law or regulation, and the Registrar has so determined in  
 293 writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be  
 294 published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

295 5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of §  
 296 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more  
 297 Board meetings and one public hearing.

298 6. Regulations of (i) the regulatory boards served by the Department of Labor and Industry pursuant to  
 299 Title 40.1 and the Department of Professional and Occupational Regulation or the Department of Health  
 300 Professions pursuant to Title 54.1 and (ii) the Board of Accountancy that are limited to reducing fees charged  
 301 to regulants and applicants.

302 7. The development and issuance of procedural policy relating to risk-based mine inspections by the

303 Department of Energy authorized pursuant to §§ 45.2-560 and 45.2-1149.

304 8. General permits issued by ~~(i) the (a) State Air Pollution Control Board of Environmental Resources~~  
 305 ~~pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control,~~ *(ii) the Board of*  
 306 *Environmental Resources* pursuant to the State Water Control Law (§ 62.1-44.2 et seq.); ~~and Chapter 24 (§~~  
 307 ~~62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1,~~ ~~(e)~~ *(iii) the Virginia Soil and*  
 308 *Water Conservation Board* pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and ~~(d)~~ *(iv) the Marine*  
 309 *Resources Commission* for the development and issuance of general wetlands permits ~~by the Marine~~  
 310 ~~Resources Commission~~ pursuant to subsection B of § 28.2-1307, if the respective Board or Commission ~~(i)~~  
 311 *(a)* provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; ~~(ii)~~  
 312 *;* *(b)* following the passage of 30 days from the publication of the Notice of Intended Regulatory Action  
 313 forms a technical advisory committee composed of relevant stakeholders, including potentially affected  
 314 citizens groups, to assist in the development of the general permit; ~~(iii)~~; *(c)* provides notice and receives oral  
 315 and written comment as provided in § 2.2-4007.03; and ~~(iv)~~ *(d)* conducts at least one public hearing on the  
 316 proposed general permit.

317 9. The development and issuance by the Board of Education of guidelines on constitutional rights and  
 318 restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools  
 319 pursuant to § 22.1-202.

320 10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23.1-704.

321 11. Regulations of the Marine Resources Commission.

322 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide  
 323 Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the  
 324 Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a  
 325 Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the  
 326 proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03,  
 327 and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of  
 328 the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by  
 329 the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-  
 330 4013 and 2.2-4014 concerning review by the Governor and General Assembly.

331 13. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E of §  
 332 54.1-3443.

333 14. Waste load allocations adopted, amended, or repealed by the ~~State Water Control Board of~~  
 334 *Environmental Resources* pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), including but not  
 335 limited to Article 4.01 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides  
 336 public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day  
 337 comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides  
 338 summary response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the  
 339 provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the Board  
 340 shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and  
 341 General Assembly.

342 15. Regulations of the Workers' Compensation Commission adopted pursuant to § 65.2-605, including  
 343 regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the  
 344 Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in  
 345 subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an opportunity  
 346 for public comment on the regulations prior to adoption.

347 16. Amendments to the State Health Services Plan adopted by the Board of Health following receipt of  
 348 recommendations by the State Health Services Task Force pursuant to § 32.1-102.2:1 if the Board (i)  
 349 provides a Notice of Intended Regulatory Action in accordance with the requirements of § 2.2-4007.01, (ii)  
 350 provides notice and receives comments as provided in § 2.2-4007.03, and (iii) conducts at least one public  
 351 hearing on the proposed amendments.

352 B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will  
 353 receive, consider, and respond to petitions by any interested person at any time with respect to  
 354 reconsideration or revision. The effective date of regulations adopted under this section shall be in accordance  
 355 with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective  
 356 as provided in subsection B of § 2.2-4012.

357 C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and that is  
 358 placed before a board or commission for consideration shall be provided at least two days in advance of the  
 359 board or commission meeting to members of the public that request a copy of that regulation. A copy of that  
 360 regulation shall be made available to the public attending such meeting.

361 **§ 2.2-4007.07. Department of Environmental Quality; variances.**

362 The provisions of §§ 2.2-4007 through 2.2-4007.06 shall not apply to the issuance by the ~~State Air~~  
 363 ~~Pollution Control Board~~ *Department of Environmental Quality* of variances to ~~its~~ *the* regulations of the Board

364 of *Environmental Resources*.

365 **§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.**

366 A. The Governor shall adopt and publish procedures by executive order for review of all proposed  
367 regulations governed by this chapter by June 30 of the year in which the Governor takes office. The  
368 procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed  
369 regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary  
370 to protect the public health, safety and welfare and (b) clearly written and easily understandable. The  
371 procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

372 The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the  
373 agency no later than ~~fifteen~~ 15 days following the completion of the public comment period provided for in §  
374 2.2-4007.03. The Governor may recommend amendments or modifications to any regulation that would bring  
375 that regulation into conformity with statutory authority or state or federal laws, regulations or judicial  
376 decisions.

377 Not less than ~~fifteen~~ 15 days following the completion of the public comment period provided for in §  
378 2.2-4007.03, the agency may (i) adopt the proposed regulation if the Governor has no objection to the  
379 regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's  
380 objections or suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's  
381 recommendations for change.

382 B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar  
383 of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation  
384 shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be  
385 explained in the final regulation.

386 C. If the Governor finds that one or more changes with substantial impact have been made to the proposed  
387 regulation, he may require the agency to provide an additional ~~thirty~~ 30 days to solicit additional public  
388 comment on the changes by transmitting notice of the additional public comment period to the agency and to  
389 the Registrar within the 30-day final adoption period described in subsection D, and publishing the notice in  
390 the Register. The additional public comment period required by the Governor shall begin upon publication of  
391 the notice in the Register.

392 D. A 30-day final adoption period for regulations shall commence upon the publication of the final  
393 regulation in the Register. The Governor may review the final regulation during this 30-day final adoption  
394 period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the  
395 regulation, suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014, or  
396 both.

397 If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar  
398 and agency prior to the conclusion of the 30-day final adoption period. The Governor shall be deemed to have  
399 acquiesced to a promulgated regulation if he fails to object to it or if he fails to suspend the effective date of  
400 the regulation in accordance with subsection B of § 2.2-4014. The Governor's objection, or the suspension of  
401 the regulation, or both if applicable, shall be published in the Register.

402 A regulation shall become effective as provided in § 2.2-4015.

403 E. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~ *Department of*  
404 *Environmental Quality* of variances to its regulations.

405 **§ 2.2-4014. Legislative review of proposed and final regulations.**

406 A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of the  
407 General Assembly to which matters relating to the content of the regulation are most properly referable or the  
408 Joint Commission on Administrative Rules may meet and, during the promulgation or final adoption process,  
409 file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation.  
410 The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within  
411 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a  
412 response with the Registrar, the objecting legislative committee or the Joint Commission on Administrative  
413 Rules, and the Governor. If a legislative objection is filed within the final adoption period, subdivision A 1 of  
414 § 2.2-4015 shall govern.

415 B. In addition or as an alternative to the provisions of subsection A, the standing committee of both  
416 houses of the General Assembly to which matters relating to the content are most properly referable or the  
417 Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a final  
418 regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each  
419 house or (ii) the Joint Commission on Administrative Rules may direct, through a statement signed by a  
420 majority of their respective members and by the Governor, that the effective date of a portion or all of the  
421 final regulation is suspended and shall not take effect until the end of the next regular legislative session. This  
422 statement shall be transmitted to the promulgating agency and the Registrar within the 30-day final adoption  
423 period, or if a later effective date is specified by the agency the statement may be transmitted at any time  
424 prior to the specified later effective date, and shall be published in the Register.

425 If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation,

426 then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of §  
 427 2.2-4006, if it makes no changes to the regulation other than those required by statutory law or (ii) shall  
 428 follow the provisions of §§ 2.2-4007.01 through 2.2-4007.06, if it wishes to also make discretionary changes  
 429 to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory  
 430 authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation  
 431 shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the  
 432 agency.

433 C. A regulation shall become effective as provided in § 2.2-4015.

434 D. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~ *Department of*  
 435 *Environmental Quality* of variances to its regulations.

436 **§ 2.2-4015. Effective date of regulation; exception.**

437 A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100 et seq.)  
 438 shall become effective at the conclusion of the ~~thirty-day~~ 30-day final adoption period provided for in  
 439 subsection D of § 2.2-4013, or any other later date specified by the agency, unless:

440 1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the regulation,  
 441 unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after  
 442 the expiration of the applicable ~~twenty-one-day~~ 21-day extension period provided in § 2.2-4014;

443 2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to  
 444 provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall  
 445 become effective on a date specified by the agency that shall be after the period for which the Governor has  
 446 provided for additional public comment;

447 3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or  
 448 (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with  
 449 subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular  
 450 legislative session; or

451 4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any reason it  
 452 deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become  
 453 effective in accordance with subsection B.

454 B. Whenever the regulatory process has been suspended for any reason, any action by the agency that  
 455 either amends the regulation or does not amend the regulation but specifies a new effective date shall be  
 456 considered a readoption of the regulation for the purposes of appeal. If the regulation is suspended under §  
 457 2.2-4007.06, such readoption shall take place after the ~~thirty-day~~ 30-day public comment period required by  
 458 that subsection. Suspension of the regulatory process by the agency may occur simultaneously with the filing  
 459 of final regulations as provided in subsection B of § 2.2-4013.

460 When a regulation has been suspended, the agency must set the effective date no earlier than ~~fifteen~~ 15  
 461 days from publication of the readoption action and any changes made to the regulation. During that ~~fifteen-~~  
 462 ~~day~~ 15-day period, if the agency receives requests from at least ~~twenty-five~~ 25 persons for the opportunity to  
 463 comment on new substantial changes, it shall again suspend the regulation pursuant to § 2.2-4007.06.

464 C. This section shall not apply to the issuance by the ~~State Air Pollution Control Board~~ *Department of*  
 465 *Environmental Quality* of variances to its regulations.

466 **§ 2.2-4021. Timetable for decision; exemptions.**

467 A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a  
 468 decision on a litigated issue, and information from a prior proceeding is being considered, persons who  
 469 participated in the prior proceeding shall be provided an opportunity to respond at the board or commission  
 470 meeting to any summaries of the prior proceeding prepared by or for the board or commission.

471 B. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a  
 472 hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency  
 473 personnel responsible for rendering a decision shall render that decision within 90 days from the date of the  
 474 informal fact-finding, formal proceeding, or completion of a summary case decision proceeding, or from a  
 475 later date agreed to by the named party and the agency. If the agency does not render a decision within 90  
 476 days, the named party to the case decision may provide written notice to the agency that a decision is due. If  
 477 no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in  
 478 favor of the named party. The preceding sentence shall not apply to case decisions before (i) ~~the State Water~~  
 479 ~~Control Board~~ or the Department of Environmental Quality to the extent necessary to comply with the federal  
 480 Clean Water Act, 33 U.S.C. § 1251 et seq., (ii) ~~the State Air Pollution Control Board~~ or the Department of  
 481 Environmental Quality to the extent necessary to comply with the federal Clean Air Act, 42 U.S.C. § 7401 et  
 482 seq., or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and  
 483 Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide  
 484 notification to the named party of its decision within five days of the decision.

485 C. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a  
 486 hearing officer is empowered to recommend a finding, the board, commission, or agency personnel



487 responsible for rendering a decision shall render that decision within 30 days from the date that the agency  
 488 receives the hearing officer's recommendation. If the agency does not render a decision within 30 days, the  
 489 named party to the case decision may provide written notice to the agency that a decision is due. If no  
 490 decision is made within 30 days from agency receipt of the notice, the decision is deemed to be in favor of  
 491 the named party. The preceding sentence shall not apply to case decisions before (i) ~~the State Water Control~~  
 492 ~~Board~~ or the Department of Environmental Quality to the extent necessary to comply with the federal Clean  
 493 Water Act, 33 U.S.C. § 1251 et seq., (ii) ~~the State Air Pollution Control Board~~ or the Department of  
 494 Environmental Quality to the extent necessary to comply with the federal Clean Air Act, 42 U.S.C. § 7401 et  
 495 seq., or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and  
 496 Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide  
 497 notice to the named party of its decision within five days of the decision.

498 D. The provisions of subsection B notwithstanding, if the board members or agency personnel who  
 499 conducted the informal fact-finding, formal proceeding, or summary case decision proceeding are unable to  
 500 attend to official duties due to sickness, disability, or termination of their official capacity with the agency,  
 501 then the timeframe provisions of subsection B shall be reset and commence from the date that either new  
 502 board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed,  
 503 whichever is later. An agency shall provide notice within five days to the named party of any incapacity of  
 504 the board members or agency personnel that necessitates a replacement or a new proceeding.

505 **§ 3.2-3602. Local government regulation of fertilizer.**

506 A. No locality shall regulate the registration, packaging, labeling, sale, use, application, storage or  
 507 distribution of fertilizers except by ordinance as provided for in the requirements of the Chesapeake Bay  
 508 Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.),  
 509 the Stormwater Management Act (§ 62.1-44.15:24 et seq.) or other nonpoint source regulations adopted by  
 510 the Department of Environmental Quality or the ~~State Water Control Board~~ of *Environmental Resources*. The  
 511 provisions of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire  
 512 Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

513 B. The Commissioner may enter into an agreement with a locality to provide oversight and data collection  
 514 assistance related to the requirements of certified contractor-applicators pursuant to § 3.2-3602.1.

515 **§ 3.2-3937. Educational programs.**

516 ~~The State Water Control Board~~ *Department of Environmental Quality*, the Board of Wildlife Resources,  
 517 the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, and the Department  
 518 shall through cooperative programs develop and implement a program to inform interstate and intrastate paint  
 519 manufacturers and distributors, vessel owners, and commercial boat yards of the properties of tributyltin in  
 520 marine antifoulant paints and the law to restrict its use.

521 **§ 3.2-5633. Commissioner to receive enforcement authority for the Stage II Vapor Recovery**  
 522 **Programs.**

523 A. Upon the request of the Commissioner, the ~~State Air Pollution Control Board~~ of *Environmental*  
 524 *Resources* may delegate to the Commissioner its authority under Chapter 13 (§ 10.1-1300 et seq.) of Title  
 525 10.1; to implement and enforce any provisions of its regulations covering the storage and transfer of  
 526 petroleum liquids. Upon receiving such delegation, the authority to implement and enforce the regulations  
 527 under Chapter 13 of Title 10.1 shall be vested solely in the Commissioner, notwithstanding any provision of  
 528 law contained in Title 10.1, except as provided herein. The ~~State Air Pollution Control Board~~ of  
 529 *Environmental Resources*, in delegating its authority under this section, may make the delegation subject to  
 530 any conditions it deems appropriate to ensure effective implementation of the regulations according to the  
 531 policies of the ~~State Air Pollution Control Board~~ of *Environmental Resources*.

532 B. In addition to the Commissioner's authority to implement and enforce any provisions of the regulations  
 533 of the ~~State Air Pollution Control Board~~ of *Environmental Resources* covering the storage and transfer of  
 534 petroleum liquids, the Board may adopt regulations as are reasonably necessary for the administration,  
 535 monitoring, and enforcement of the law relating to the storage and transfer of petroleum liquids. Any  
 536 violation of the provisions covering the storage and transfer of petroleum liquids shall be deemed to be a  
 537 violation of this chapter, and the Commissioner may take appropriate enforcement action pursuant to the  
 538 provisions of this chapter.

539 **§ 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.**

540 A. Any person who:

541 1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person  
 542 (i) at the scene of an accident, fire, or any life-threatening emergency; (ii) at a location for screening or  
 543 stabilization of an emergency medical condition arising from an accident, fire, or any life-threatening  
 544 emergency; or (iii) en route to any hospital, medical clinic, or doctor's office, shall not be liable for any civil  
 545 damages for acts or omissions resulting from the rendering of such care or assistance. For purposes of this  
 546 subdivision, emergency care or assistance includes the forcible entry of a motor vehicle in order to remove an  
 547 unattended minor at risk of serious bodily injury or death, provided *that* the person has attempted to contact a

548 law-enforcement officer, as defined in § 9.1-101, a firefighter, as defined in § 65.2-102, emergency medical  
549 services personnel, as defined in § 32.1-111.1, or an emergency 911 system, if feasible under the  
550 circumstances.

551 2. In the absence of gross negligence, renders emergency obstetrical care or assistance to a female in  
552 active labor who has not previously been cared for in connection with the pregnancy by such person or by  
553 another professionally associated with such person and whose medical records are not reasonably available to  
554 such person shall not be liable for any civil damages for acts or omissions resulting from the rendering of  
555 such emergency care or assistance. The immunity herein granted shall apply only to the emergency medical  
556 care provided.

557 3. In good faith and without compensation, including any emergency medical services provider who holds  
558 a valid certificate issued by the Commissioner of Health, administers epinephrine in an emergency to an  
559 individual shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from  
560 the rendering of such treatment if such person has reason to believe that the individual receiving the injection  
561 is suffering or is about to suffer a life-threatening anaphylactic reaction.

562 4. Provides assistance upon request of any police agency, fire department, emergency medical services  
563 agency, or governmental agency in the event of an accident or other emergency involving the use, handling,  
564 transportation, transmission, or storage of liquefied petroleum gas, liquefied natural gas, hazardous material,  
565 or hazardous waste as defined in § 10.1-1400 or regulations of the Virginia Waste Management Board of  
566 *Environmental Resources* shall not be liable for any civil damages resulting from any act of commission or  
567 omission on his part in the course of his rendering such assistance in good faith.

568 5. Is an emergency medical services provider possessing a valid certificate issued by authority of the State  
569 Board of Health who in good faith renders emergency care or assistance, whether in person or by telephone  
570 or other means of communication, without compensation, to any injured or ill person, whether at the scene of  
571 an accident, fire, or any other place, or while transporting such injured or ill person to, from, or between any  
572 hospital, medical facility, medical clinic, doctor's office, or other similar or related medical facility, shall not  
573 be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care,  
574 treatment, or assistance, including but in no way limited to acts or omissions ~~which~~ *that* involve violations of  
575 State Department of Health regulations or any other state regulations in the rendering of such emergency care  
576 or assistance.

577 6. In good faith and without compensation, renders or administers emergency cardiopulmonary  
578 resuscitation (CPR); cardiac defibrillation, including, but not limited to, the use of an automated external  
579 defibrillator (AED); or other emergency life-sustaining or resuscitative treatments or procedures ~~which~~ *that*  
580 have been approved by the State Board of Health to any sick or injured person, whether at the scene of a fire,  
581 an accident, or any other place, or while transporting such person to or from any hospital, clinic, doctor's  
582 office, or other medical facility, shall be deemed qualified to administer such emergency treatments and  
583 procedures and shall not be liable for acts or omissions resulting from the rendering of such emergency  
584 resuscitative treatments or procedures.

585 7. Operates an AED at the scene of an emergency, trains individuals to be operators of AEDs, or orders  
586 AEDs; shall be immune from civil liability for any personal injury that results from any act or omission in the  
587 use of an AED in an emergency where the person performing the defibrillation acts as an ordinary,  
588 reasonably prudent person would have acted under the same or similar circumstances, unless such personal  
589 injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency  
590 care.

591 8. Maintains an AED located on real property owned or controlled by such person shall be immune from  
592 civil liability for any personal injury that results from any act or omission in the use in an emergency of an  
593 AED located on such property unless such personal injury results from gross negligence or willful or wanton  
594 misconduct of the person who maintains the AED or his agent or employee.

595 9. Is an employee of a school board or of a local health department approved by the local governing body  
596 to provide health services pursuant to § 22.1-274 who, while on school property or at a school-sponsored  
597 event, (i) renders emergency care or assistance to any sick or injured person; (ii) renders or administers  
598 emergency cardiopulmonary resuscitation (CPR); cardiac defibrillation, including, but not limited to, the use  
599 of an automated external defibrillator (AED); or other emergency life-sustaining or resuscitative treatments or  
600 procedures that have been approved by the State Board of Health to any sick or injured person; (iii) operates  
601 an AED, trains individuals to be operators of AEDs, or orders AEDs; (iv) maintains an AED; or (v) renders  
602 care in accordance with a seizure management and action plan pursuant to § 22.1-274.6, shall not be liable for  
603 civil damages for ordinary negligence in acts or omissions on the part of such employee while engaged in the  
604 acts described in this subdivision.

605 10. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol  
606 System, Inc., who, in good faith and without compensation, renders emergency care or assistance to any  
607 injured or ill person, whether at the scene of a ski resort rescue, outdoor emergency rescue, or any other place  
608 or while transporting such injured or ill person to a place accessible for transfer to any available emergency

609 medical system unit, or any resort owner voluntarily providing a ski patroller employed by him to engage in  
 610 rescue or recovery work at a resort not owned or operated by him, shall not be liable for any civil damages for  
 611 acts or omissions resulting from the rendering of such emergency care, treatment, or assistance, including but  
 612 not limited to acts or omissions which involve violations of any state regulation or any standard of the  
 613 National Ski Patrol System, Inc., in the rendering of such emergency care or assistance, unless such act or  
 614 omission was the result of gross negligence or willful misconduct.

615 11. Is an employee of (i) a school board, (ii) a school for students with disabilities as defined in § 22.1-  
 616 319 licensed by the Board of Education, or (iii) a private school accredited pursuant to § 22.1-19 as  
 617 administered by the Virginia Council for Private Education and is authorized by a prescriber and trained in  
 618 the administration of insulin and glucagon, who, upon the written request of the parents as defined in § 22.1-1  
 619 , assists with the administration of insulin or, in the case of a school board employee, with the insertion or  
 620 reinsertion of an insulin pump or any of its parts pursuant to subsection B of § 22.1-274.01:1 or administers  
 621 glucagon to a student diagnosed as having diabetes who requires insulin injections during the school day or  
 622 for whom glucagon has been prescribed for the emergency treatment of hypoglycemia shall not be liable for  
 623 any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment  
 624 if the insulin is administered according to the child's medication schedule or such employee has reason to  
 625 believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening  
 626 hypoglycemia. Whenever any such employee is covered by the immunity granted herein, the school board or  
 627 school employing him shall not be liable for any civil damages for ordinary negligence in acts or omissions  
 628 resulting from the rendering of such insulin or glucagon treatment.

629 12. Is an employee of a public institution of higher education or a private institution of higher education  
 630 who is authorized by a prescriber and trained in the administration of insulin and glucagon, who assists with  
 631 the administration of insulin or administers glucagon to a student diagnosed as having diabetes who requires  
 632 insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia  
 633 shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the  
 634 rendering of such treatment if the insulin is administered according to the student's medication schedule or  
 635 such employee has reason to believe that the individual receiving the glucagon is suffering or is about to  
 636 suffer life-threatening hypoglycemia. Whenever any employee is covered by the immunity granted in this  
 637 subdivision, the institution shall not be liable for any civil damages for ordinary negligence in acts or  
 638 omissions resulting from the rendering of such insulin or glucagon treatment.

639 13. Is a school nurse, an employee of a school board, an employee of a local governing body, or an  
 640 employee of a local health department who is authorized by a prescriber and trained in the administration of  
 641 epinephrine and who provides, administers, or assists in the administration of epinephrine to a student  
 642 believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not  
 643 be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of  
 644 such treatment.

645 14. Is an employee of a school for students with disabilities, as defined in § 22.1-319 and licensed by the  
 646 Board of Education, or an employee of a private school that is accredited pursuant to § 22.1-19 as  
 647 administered by the Virginia Council for Private Education who is authorized by a prescriber and trained in  
 648 the administration of epinephrine and who administers or assists in the administration of epinephrine to a  
 649 student believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine,  
 650 shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the  
 651 rendering of such treatment. Whenever any employee is covered by the immunity granted in this subdivision,  
 652 the school shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting  
 653 from such administration or assistance.

654 15. Is an employee of a public institution of higher education or a private institution of higher education  
 655 who is authorized by a prescriber and trained in the administration of epinephrine and who administers or  
 656 assists in the administration of epinephrine to a student believed in good faith to be having an anaphylactic  
 657 reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary  
 658 negligence in acts or omissions resulting from the rendering of such treatment. Whenever any employee is  
 659 covered by the immunity granted in this subdivision, the institution shall not be liable for any civil damages  
 660 for ordinary negligence in acts or omissions resulting from such administration or assistance.

661 16. Is an employee of an organization providing outdoor educational experiences or programs for youth  
 662 who is authorized by a prescriber and trained in the administration of epinephrine and who administers or  
 663 assists in the administration of epinephrine to a participant in the outdoor experience or program for youth  
 664 believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not  
 665 be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering  
 666 of such treatment. Whenever any employee is covered by the immunity granted in this subdivision, the  
 667 organization shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting  
 668 from such administration or assistance.

669 17. Is an employee of a restaurant licensed pursuant to Chapter 3 (§ 35.1-18 et seq.) of Title 35.1, is

670 authorized by a prescriber and trained in the administration of epinephrine, and provides, administers, or  
671 assists in the administration of epinephrine to an individual believed in good faith to be having an  
672 anaphylactic reaction on the premises of the restaurant at which the employee is employed, or is the  
673 prescriber of the epinephrine, shall not be liable for any civil damages for ordinary negligence in acts or  
674 omissions resulting from the rendering of such treatment.

675 18. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental  
676 Services, or provides services pursuant to a contract with a provider licensed by the Department of  
677 Behavioral Health and Developmental Services, who has been trained in the administration of insulin and  
678 glucagon and who administers or assists with the administration of insulin or administers glucagon to a  
679 person diagnosed as having diabetes who requires insulin injections or for whom glucagon has been  
680 prescribed for the emergency treatment of hypoglycemia in accordance with § 54.1-3408 shall not be liable  
681 for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such  
682 treatment if the insulin is administered in accordance with the prescriber's instructions or such person has  
683 reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening  
684 hypoglycemia. Whenever any employee of a provider licensed by the Department of Behavioral Health and  
685 Developmental Services or a person who provides services pursuant to a contract with a provider licensed by  
686 the Department of Behavioral Health and Developmental Services is covered by the immunity granted herein,  
687 the provider shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting  
688 from the rendering of such insulin or glucagon treatment.

689 19. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental  
690 Services, or provides services pursuant to a contract with a provider licensed by the Department of  
691 Behavioral Health and Developmental Services, who has been trained in the administration of epinephrine  
692 and who administers or assists in the administration of epinephrine to a person believed in good faith to be  
693 having an anaphylactic reaction in accordance with the prescriber's instructions shall not be liable for any  
694 civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

695 20. In good faith prescribes, dispenses, or administers naloxone or other opioid antagonist used for  
696 overdose reversal in an emergency to an individual who is believed to be experiencing or about to experience  
697 a life-threatening opiate overdose shall not be liable for any civil damages for ordinary negligence in acts or  
698 omissions resulting from the rendering of such treatment if acting in accordance with the provisions of  
699 subsection X or Y of § 54.1-3408 or in his role as a member of an emergency medical services agency.

700 21. In good faith administers naloxone or other opioid antagonist used for overdose reversal to a person  
701 who is believed to be experiencing or about to experience a life-threatening opioid overdose in accordance  
702 with the provisions of subsection Z of § 54.1-3408 shall not be liable for any civil damages for any personal  
703 injury that results from any act or omission in the administration of naloxone or other opioid antagonist used  
704 for overdose reversal, unless such act or omission was the result of gross negligence or willful and wanton  
705 misconduct.

706 22. Is an employee of a school board, school for students with disabilities as defined in § 22.1-319  
707 licensed by the Board of Education, or private school accredited pursuant to § 22.1-19 as administered by the  
708 Virginia Council for Private Education who is trained in the administration of injected medications for the  
709 treatment of adrenal crisis resulting from a condition causing adrenal insufficiency and who administers or  
710 assists in the administration of such medications to a student diagnosed with a condition causing adrenal  
711 insufficiency when the student is believed to be experiencing or about to experience an adrenal crisis  
712 pursuant to a written order or standing protocol issued by a prescriber within the course of his professional  
713 practice and in accordance with the prescriber's instructions shall not be liable for any civil damages for  
714 ordinary negligence in acts or omissions resulting from the rendering of such treatment.

715 23. Is a school nurse, a licensed athletic trainer under contract with a local school division, an employee of  
716 a school board, an employee of a local governing body, or an employee of a local health department who is  
717 authorized by the local health director and trained in the administration of albuterol inhalers and valved  
718 holding chambers or nebulized albuterol and who provides, administers, or assists in the administration of an  
719 albuterol inhaler and a valved holding chamber or nebulized albuterol for a student believed in good faith to  
720 be in need of such medication, or is the prescriber of such medication, shall not be liable for any civil  
721 damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

722 24. Is an employee of a public place, as defined in § 15.2-2820, who is authorized by a prescriber and  
723 trained in the administration of epinephrine and who administers or assists in the administration of  
724 epinephrine to a person present in the public place believed in good faith to be having an anaphylactic  
725 reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary  
726 negligence in acts or omissions resulting from the rendering of such treatment. Whenever any employee is  
727 covered by the immunity granted in this subdivision, the organization shall not be liable for any civil  
728 damages for ordinary negligence in acts or omissions resulting from such administration or assistance.

729 25. Is a nurse at an early childhood care and education entity, employee at the entity, or employee of a  
730 local health department who is authorized by a prescriber and trained in the administration of epinephrine and

731 who provides, administers, or assists in the administration of epinephrine to a child believed in good faith to  
 732 be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not be liable for any civil  
 733 damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

734 B. Any licensed physician serving without compensation as the operational medical director for an  
 735 emergency medical services agency that holds a valid license as an emergency medical services agency  
 736 issued by the Commissioner of Health shall not be liable for any civil damages for any act or omission  
 737 resulting from the rendering of emergency medical services in good faith by the personnel of such licensed  
 738 agency unless such act or omission was the result of such physician's gross negligence or willful misconduct.

739 Any person serving without compensation as a dispatcher for any licensed public or nonprofit emergency  
 740 medical services agency in the Commonwealth shall not be liable for any civil damages for any act or  
 741 omission resulting from the rendering of emergency services in good faith by the personnel of such licensed  
 742 agency unless such act or omission was the result of such dispatcher's gross negligence or willful misconduct.

743 Any individual, certified by the State Office of Emergency Medical Services as an emergency medical  
 744 services instructor and pursuant to a written agreement with such office, who, in good faith and in the  
 745 performance of his duties, provides instruction to persons for certification or recertification as a certified  
 746 basic life support or advanced life support emergency medical services provider shall not be liable for any  
 747 civil damages for acts or omissions on his part directly relating to his activities on behalf of such office unless  
 748 such act or omission was the result of such emergency medical services instructor's gross negligence or  
 749 willful misconduct.

750 Any licensed physician serving without compensation as a medical advisor to an E-911 system in the  
 751 Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering  
 752 medical advice in good faith to establish protocols to be used by the personnel of the E-911 service, as  
 753 defined in § 58.1-1730, when answering emergency calls unless such act or omission was the result of such  
 754 physician's gross negligence or willful misconduct.

755 Any licensed physician who directs the provision of emergency medical services, as authorized by the  
 756 State Board of Health, through a communications device shall not be liable for any civil damages for any act  
 757 or omission resulting from the rendering of such emergency medical services unless such act or omission was  
 758 the result of such physician's gross negligence or willful misconduct.

759 Any licensed physician serving without compensation as a supervisor of an AED in the Commonwealth  
 760 shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in  
 761 good faith to the owner of the AED relating to personnel training, local emergency medical services  
 762 coordination, protocol approval, AED deployment strategies, and equipment maintenance plans and records  
 763 unless such act or omission was the result of such physician's gross negligence or willful misconduct.

764 C. Any communications services provider, as defined in § 58.1-647, including mobile service, and any  
 765 provider of Voice-over-Internet Protocol service, in the Commonwealth shall not be liable for any civil  
 766 damages for any act or omission resulting from rendering such service with or without charge related to  
 767 emergency calls unless such act or omission was the result of such service provider's gross negligence or  
 768 willful misconduct.

769 Any volunteer engaging in rescue or recovery work at a mine, or any mine operator voluntarily providing  
 770 personnel to engage in rescue or recovery work at a mine not owned or operated by such operator, shall not  
 771 be liable for civil damages for acts or omissions resulting from the rendering of such rescue or recovery work  
 772 in good faith unless such act or omission was the result of gross negligence or willful misconduct. For  
 773 purposes of this subsection, "Voice-over-Internet Protocol service" or "VoIP service" means any Internet  
 774 protocol-enabled services utilizing a broadband connection, actually originating or terminating in Internet  
 775 Protocol from either or both ends of a channel of communication offering real time, multidirectional voice  
 776 functionality, including, but not limited to, services similar to traditional telephone service.

777 D. Nothing contained in this section shall be construed to provide immunity from liability arising out of  
 778 the operation of a motor vehicle.

779 E. For the purposes of this section, "compensation" ~~shall does not be construed to~~ include (i) the salaries  
 780 of police, fire, or other public officials or personnel who render such emergency assistance; (ii) the salaries or  
 781 wages of employees of a coal producer engaging in emergency medical services or first aid services pursuant  
 782 to the provisions of § 45.2-531, 45.2-579, 45.2-863 or 45.2-910; (iii) complimentary lift tickets, food,  
 783 lodging, or other gifts provided as a gratuity to volunteer members of the National Ski Patrol System, Inc., by  
 784 any resort, group, or agency; (iv) the salary of any person who (a) owns an AED for the use at the scene of an  
 785 emergency, (b) trains individuals, in courses approved by the Board of Health, to operate AEDs at the scene  
 786 of emergencies, (c) orders AEDs for use at the scene of emergencies, or (d) operates an AED at the scene of  
 787 an emergency; or (v) expenses reimbursed to any person providing care or assistance pursuant to this section.

788 For the purposes of this section, "emergency medical services provider" ~~shall include~~ includes a person  
 789 licensed or certified as such or its equivalent by any other state when he is performing services that he is  
 790 licensed or certified to perform by such other state in caring for a patient in transit in the Commonwealth,  
 791 which care originated in such other state.

792 Further, the public shall be urged to receive training on how to use CPR and an AED in order to acquire

793 the skills and confidence to respond to emergencies using both CPR and an AED.

794 **§ 10.1-404. Recommendation that a river be designated a scenic river.**

795 A recommendation to the Governor and General Assembly that a river or section thereof be designated a  
796 scenic river shall be submitted with:

797 1. The views and recommendations of the ~~State Water Control Board~~ *Department of Environmental*  
798 *Quality* and other affected agencies; and

799 2. A report showing the proposed area and classification, the characteristics which qualify the river or  
800 section of river for designation, the general ownership and land use in the area, and the estimated costs of  
801 acquisition and administration in the Scenic Rivers System.

802 **§ 10.1-605. Promulgation of regulations by the Board; guidance document.**

803 A. The Board shall adopt regulations to ensure that impounding structures in the Commonwealth are  
804 properly and safely constructed, maintained, and operated. Dam safety regulations promulgated by the ~~State~~  
805 ~~Water Control Board~~ *of Environmental Resources* shall remain in full force until amended in accordance with  
806 applicable procedures.

807 B. The Board's Impounding Structure Regulations shall not require any impounding structure in existence  
808 or under a construction permit prior to July 1, 2010, that is currently classified as high hazard, or is  
809 subsequently found to be high hazard through reclassification, to upgrade its spillway to pass a rainfall event  
810 greater than the maximum recorded within the Commonwealth, which shall be deemed to be 90 percent of  
811 the probable maximum precipitation.

812 1. Such an impounding structure shall be determined to be in compliance with the spillway requirements  
813 of the regulations provided that (i) the impounding structure will pass two-thirds of the reduced probable  
814 maximum precipitation requirement described in this subsection and (ii) the dam owner certifies annually and  
815 by January 15 that such impounding structure meets each of the following conditions:

816 a. The owner has a current emergency action plan that is approved by the Board and that is developed and  
817 updated in accordance with the regulations;

818 b. The owner has exercised the emergency action plan in accordance with the regulations and conducts a  
819 table-top exercise at least once every two years;

820 c. The Department has verification that both the local organization for emergency management and the  
821 Virginia Department of Emergency Management have on file current emergency action plans and updates for  
822 the impounding structure;

823 d. That conditions at the impounding structure are monitored on a daily basis and as dictated by the  
824 emergency action plan;

825 e. The impounding structure is inspected at least annually by a professional engineer and all observed  
826 deficiencies are addressed within 120 days of such inspection;

827 f. The owner has a dam break inundation zone map developed in accordance with the regulations that is  
828 acceptable to the Department;

829 g. The owner is insured in an amount that will substantially cover the costs of downstream property losses  
830 to others that may result from a dam failure; and

831 h. The owner shall post the dam's emergency action plan on his website, or upon the request of the owner,  
832 the Department or another state agency responsible for providing emergency management services to citizens  
833 agrees to post the plan on its website. If the Department or another state agency agrees to post the plan on its  
834 website, the owner shall provide the plan in a format suitable for posting.

835 2. A dam owner who meets the conditions of subdivisions 1 a through 1 h, but has not provided record  
836 drawings to the Department for his impounding structure, shall submit a complete record report developed in  
837 accordance with the construction permit requirements of the Impounding Structure Regulations, excluding  
838 the required submittal of the record drawings.

839 3. A dam owner who fails to submit certifications required by subdivisions 1 a through 1 h in a timely  
840 fashion shall not enjoy the presumption that such impounding structure is deemed to be in compliance with  
841 the spillway requirements of the Board's Impounding Structure Regulations (4VAC50-20).

842 4. Any dam owner who has submitted the certifications required by subdivisions 1 a through 1 h shall  
843 make (i) such certifications, (ii) the emergency action plan required by subdivision 1 a, and (iii) the certificate  
844 of insurance required by subdivision 1 g available, upon request and within five business days, to any person.  
845 A dam owner may comply with the requirements of this subdivision by providing the same information on a  
846 website and directing the requestor to such website. A dam owner who fails to comply with this subdivision  
847 shall be subject to a civil penalty pursuant to § 10.1-613.2.

848 C. The Board's regulations shall establish an incremental damage analysis procedure that permits the  
849 spillway design flood requirement for an impounding structure to be reduced to the level at which dam failure  
850 shall not significantly increase downstream hazard to life or property, provided that the spillway design flood  
851 requirement shall not be reduced to below the 100-year flood event for high or significant hazard impounding  
852 structures, or to below the 50-year flood event for low hazard potential impounding structures.

853 D. The Board shall consider the impact of limited-use or private roadways with low traffic volume and

854 low public safety risk that are downstream from or across an impounding structure in the determination of the  
855 hazard potential classification of an impounding structure.

856 **§ 10.1-651. Establishment and administration of Program.**

857 The Stream Restoration Assistance Program is continued to protect the natural streams of the  
858 Commonwealth. The Program shall aid in the stabilization and protection of natural streams ~~which~~ *that* have  
859 been severely damaged by naturally occurring flooding events. The Program shall be administered by the  
860 Virginia Soil and Water Conservation Board in cooperation with soil and water conservation districts and  
861 local governments throughout the Commonwealth. To assist in the development of the Program, the Board  
862 shall seek the advisory opinion of the ~~State Water Control Board~~ *Department of Environmental Quality* and  
863 the Department of Wildlife Resources.

864 **§ 10.1-659. Flood protection programs; coordination.**

865 A. The provisions of this chapter shall be coordinated with the Virginia Coastal Resilience Master Plan,  
866 the Virginia Flood Protection Master Plan, and federal, state, and local flood prevention and water quality  
867 programs to minimize loss of life, property damage, and negative impacts on the environment. This program  
868 coordination shall include but not be limited to the following: flood prevention, flood plain management,  
869 small watershed protection, dam safety, shoreline erosion and public beach preservation, and soil  
870 conservation programs of the Department of Conservation and Recreation; the construction activities of the  
871 Department of Transportation, including projects that result in hydrologic modification of rivers, streams, and  
872 flood plains; the nontidal wetlands, water quality, Chesapeake Bay Preservation Area criteria, stormwater  
873 management, erosion and sediment control, and other water management programs of the ~~State Water~~  
874 ~~Control Board~~ *Board of Environmental Resources*; the Virginia Coastal Zone Management Program at the  
875 Department of Environmental Quality; forested watershed management programs of the Department of  
876 Forestry; the agricultural stewardship, farmland preservation, and disaster assistance programs of the  
877 Department of Agriculture and Consumer Services; the statewide building code and other land use control  
878 programs of the Department of Housing and Community Development; the habitat management programs of  
879 the Virginia Marine Resources Commission; the hazard mitigation planning and disaster response programs  
880 of the Department of Emergency Management; the fish and wildlife habitat protection programs of the  
881 Department of Wildlife Resources; the mineral extraction regulatory program of the Department of Energy;  
882 the flood plain restrictions of the ~~Virginia Waste Management Board~~ *Board of Environmental Resources*; flooding-  
883 related research programs of the state universities; local government assistance programs of the Virginia Soil  
884 and Water Conservation Board; the Virginia Antiquities Act program of the Department of Historic  
885 Resources; the public health and preparedness programs of the Virginia Department of Health; the State  
886 Council of Higher Education for Virginia; the State Corporation Commission; and any other state agency  
887 programs deemed necessary by the Director, the Chief Resilience Officer of the Commonwealth, and the  
888 Special Assistant to the Governor for Coastal Adaptation and Protection. The Department shall also  
889 coordinate with soil and water conservation districts, Virginia Cooperative Extension agents, and planning  
890 district commissions; and shall coordinate and cooperate with localities in rendering assistance to such  
891 localities in their efforts to comply with the planning, subdivision of land, and zoning provisions of Chapter  
892 22 (§ 15.2-2200 et seq.) of Title 15.2.

893 B. The Director, in coordination with the Special Assistant to the Governor for Coastal Adaptation and  
894 Protection and the Chief Resilience Officer, shall hold meetings of representatives of the programs, entities,  
895 and localities described in subsection A at least annually in order to determine, coordinate, and prioritize the  
896 Commonwealth's efforts and expenditures to increase flooding resilience and flood preparedness and to  
897 implement the Virginia Coastal Resilience Master Plan and the Virginia Flood Protection Master Plan. The  
898 Department shall review any revisions to the Virginia Flood Protection Master Plan and provide an update on  
899 the progress of the implementation of the Virginia Coastal Resilience Master Plan at any such meetings. The  
900 Department shall cooperate with other public and private agencies having flood plain management programs  
901 and shall coordinate its responsibilities under this article and any other law. These activities shall constitute  
902 the Commonwealth's flood resilience, preparedness, prevention, and protection program.

903 C. 1. The Chief Resilience Officer, in coordination with the Special Assistant to the Governor for Coastal  
904 Adaptation and Protection and the Director, shall establish the Virginia Coastal Resilience Technical  
905 Advisory Committee (the Committee) to assist with developing, updating, and implementing the Virginia  
906 Coastal Resilience Master Plan.

907 2. The Committee shall be ~~comprised~~ *composed* of representatives of state agencies, coastal planning  
908 district commissions, regional commissions, academic advisors, and any other representatives as needed.  
909 Members shall serve at the pleasure of the Governor and shall include the following individuals or their  
910 designees: the executive directors of coastal planning district commissions and regional commissions; the  
911 Special Assistant to the Governor for Coastal Adaptation and Protection; the Director; the ~~Director of the~~  
912 ~~Virginia Department~~ *State Coordinator* of Emergency Management; the Director of the Virginia Department  
913 of Housing and Community Development; the Executive Director of the Virginia Resources Authority; the  
914 Director of the Department of Environmental Quality; the Commissioner of the Virginia Department of

915 Transportation; the Director of the Virginia Transportation Research Council; the Commissioner of the  
 916 Virginia Marine Resources Commission; the Director of the Institute for Coastal Adaptation and Resilience;  
 917 the Associate Dean for Research and Advisory Services at the Virginia Institute of Marine Science; the  
 918 Director of the William and Mary School of Law Coastal Policy Center; the Director of the Virginia Tech  
 919 Center for Coastal Studies; the Director of the Environmental Resilience Institute at the University of  
 920 Virginia; the Director of Virginia Sea Grant; the Director of Diversity, Equity, and Inclusion; and the Chief  
 921 Data Officer of the Commonwealth. The Chief Resilience Officer shall serve as chairman of the Committee.

922 3. The Chief Resilience Officer shall invite participation by the Commander of the U.S. Army Corps of  
 923 Engineers, Norfolk District; the Commander of the Navy Region Mid-Atlantic; and representatives of the  
 924 seven federally recognized Tribal Nations indigenous to the Commonwealth of Virginia.

925 4. Appointed members shall serve in an advisory role without compensation.

926 5. The Committee shall meet at least quarterly.

927 6. The Department, the Special Assistant to the Governor for Coastal Adaptation and Protection, and the  
 928 Coastal Zone Management Program shall provide staff support to the Committee.

929 7. The Committee shall ensure that (i) risk evaluations and project prioritization protocols are regularly  
 930 updated and are informed by the best applicable scientific and technical data; (ii) statewide and regional  
 931 needs are addressed using the best applicable science and long-term resilience approaches; and (iii) the  
 932 Virginia Coastal Resilience Master Planning Framework is adhered to in the development and updating of the  
 933 Virginia Coastal Resilience Master Plan. The Committee shall also review updates to the Virginia Coastal  
 934 Resilience Master Plan and receive updates about the progress of the Virginia Flood Protection Master Plan  
 935 at each meeting. Additionally, the Committee may be called upon to assist the Department with the  
 936 development and updating of the Virginia Flood Protection Master Plan.

937 **§ 10.1-1182. Definitions.**

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

939 "Board" means the Board of Environmental Resources.

940 "Department" means the Department of Environmental Quality.

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

942 "Environment" means the natural, scenic, and historic attributes of the Commonwealth.

943 "Environmental justice" means the fair treatment and meaningful involvement of every person, regardless  
 944 of race, color, national origin, faith, disability, or income, in the development, implementation, and  
 945 enforcement of environmental laws, regulations, and policies.

946 "Special order" means an administrative order issued to any party that has a stated duration of not more  
 947 than twelve 12 months and that may include a civil penalty of not more than \$10,000.

948 **§ 10.1-1183.1. Board of Environmental Resources created; membership; terms; chairman; Executive**  
 949 **Director.**

950 A. There is hereby created the Board of Environmental Resources by the consolidation of the State Air  
 951 Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board. All  
 952 policies and regulations adopted or promulgated by the State Air Pollution Control Board, the State Water  
 953 Control Board, and the Virginia Waste Management Board in effect on July 1, 2024, shall continue to be in  
 954 effect as policies or regulations of the Board until and unless superseded by new policies or regulations  
 955 adopted or promulgated by the Board. All regulatory actions by the State Air Pollution Control Board, the  
 956 State Water Control Board, and the Virginia Waste Management Board that are pending on July 1, 2024,  
 957 shall continue as pending regulatory actions of the Board. All powers, duties, and agreements entered into or  
 958 issued by the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste  
 959 Management Board in effect on July 1, 2024, shall be transferred to the Board and shall be treated as  
 960 powers, duties, and agreements entered into or issued by the Board.

961 B. The Board shall consist of nine nonlegislative citizen members appointed by the Governor and subject  
 962 to confirmation by the General Assembly. Members shall be appointed for terms of four years. Vacancies  
 963 other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term.  
 964 Members of the Board shall be citizens of the Commonwealth, selected on the basis of merit without regard  
 965 to political affiliation, and who shall, by character and reputation, reasonably be expected to inspire the highest  
 966 degree of cooperation and confidence in the work of the Board. Members shall, by their education, training,  
 967 or experience, be knowledgeable of environmental quality control and regulation and shall be representative  
 968 of conservation, public health, business, land development, and agriculture. In making appointments, the  
 969 Governor shall endeavor to ensure balanced geographical representation.

970 C. No person appointed to the Board shall be employed by persons subject to permits or enforcement  
 971 orders of the Department or receive a significant portion of his income, whether directly or indirectly, from  
 972 persons subject to permits or enforcement orders of the Department. Income from a vested retirement benefit  
 973 shall not be considered income for the purposes of this subsection. No person shall become a member of the  
 974 Board who receives, or during the previous two years has received, a significant portion of his income  
 975 directly or indirectly from certificate or permit holders or applicants for a certificate or permit issued by the



976 Department. Notwithstanding any other provision of this section, the qualifications for Board membership  
 977 shall not be more strict than those required by federal statute or regulations of the U.S. Environmental  
 978 Protection Agency. The provisions of this subsection shall be in addition to the requirements of the State and  
 979 Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). For the purposes of this subsection,  
 980 "significant portion of income" means 10 percent or more of gross personal income for a calendar year,  
 981 except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over  
 982 60 years of age and is receiving such portion under retirement benefits, a pension, or a similar arrangement.  
 983 "Income" includes retirement benefits, consulting fees, and stock dividends. Income is not received directly or  
 984 indirectly from certificate or permit holders or applicants for certificates or permits when such income is  
 985 derived from mutual fund payments or from other diversified investments for which the recipient does not  
 986 know the identity of the primary sources of income.

987 D. The Board shall meet at least four times each year, and other meetings may be held at any time or  
 988 place determined by the Board or upon the call of the chairman or upon written request of any two members  
 989 of the Board. All members shall be duly notified of the time and place of any regular or other meeting at least  
 990 five days in advance of such meeting. A majority of the members of the Board shall constitute a quorum for  
 991 the transaction of business.

992 E. The Board shall keep a complete and accurate record of the proceedings at all of its meetings, a copy  
 993 of which shall be kept on file in the office of the Executive Director and open to public inspection. Any  
 994 standards, policies, rules, or regulations adopted by the Board to have general effect in part or all of the  
 995 Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

996 F. The Board shall elect a chairman from among its members, and an Executive Director shall be  
 997 appointed as set forth in § 2.2-106. The Executive Director shall serve as executive officer of the Board but  
 998 shall not serve as a member of the Board. The Executive Director shall devote his whole time to the  
 999 performance of his duties, and he shall have such administrative powers as are conferred upon him by the  
 1000 Board. The Board may delegate to the Executive Director any of the powers and duties invested in it except  
 1001 the adoption and promulgation of standards, rules, and regulations.

1002 G. The Board may call upon any state department or agency for technical assistance. All departments and  
 1003 agencies of the Commonwealth shall, upon request, assist the Board in the performance of its duties.

1004 **§ 10.1-1184.1. Additional duties of Department; controversial permits.**

1005 A. For purposes of this section, "controversial permit" means an air or water permitting action for which a  
 1006 public hearing has been granted pursuant to the provisions of subsection C. "Controversial permit" also  
 1007 means an air permitting action where a public hearing is required for (i) the construction of a new major  
 1008 source or for a major modification to an existing source, (ii) a new fossil fuel-fired generating facility with a  
 1009 capacity of 500 megawatts or more, (iii) a major modification to an existing source that is a fossil fuel-fired  
 1010 generating facility with a capacity of 500 megawatts or more, (iv) a new fossil fuel-fired compressor station  
 1011 facility used to transport natural gas, or (v) a major modification to an existing source that is a fossil fuel-  
 1012 fired compressor station facility used to transport natural gas.

1013 B. At each regular meeting of the ~~Air Pollution Control Board or the State Water Control Board~~, the  
 1014 Department shall provide an overview and update regarding any controversial permits pending before the  
 1015 Department that are relevant to ~~each board~~ the Board. Immediately after such presentation by the  
 1016 Department, the board shall have an opportunity to respond to the Department's presentation and provide  
 1017 commentary regarding such pending permits. Before rendering a final decision on a controversial permit, the  
 1018 Department shall publish a summary of public comments received during the applicable public comment  
 1019 period and public hearing. After such publication, the Department shall publish responses to the public  
 1020 comment summary and hold a public hearing to provide an opportunity for individuals who previously  
 1021 commented, either at a public hearing or in writing during the applicable public comment period, to respond  
 1022 to the Department's public comment summary and response. No new information shall be accepted at that  
 1023 time.

1024 C. Any changes to regulations necessary to implement the provisions of this section shall include the  
 1025 following criteria for requesting and granting a public hearing on a permit action during a public comment  
 1026 period in those instances where a public hearing is not mandatory under state or federal law or regulation.

1027 1. During the public comment period on permit action, interested persons may request a public hearing to  
 1028 contest such action or the terms and conditions thereof. Requests for a public hearing shall contain the  
 1029 following information: (i) the name and postal mailing or email address of the requester; (ii) the names and  
 1030 addresses of all persons for whom the requester is acting as a representative (for the purposes of this  
 1031 requirement, "person" includes an unincorporated association); (iii) the reason for the request for a public  
 1032 hearing; (iv) a brief, informal statement setting forth the factual nature and the extent of the interest of the  
 1033 requester or of the persons for whom the requester is acting as representative in the application or tentative  
 1034 determination, including an explanation of how and to what extent such interest would be directly and  
 1035 adversely affected by the issuance, denial, modification, or revocation of the permit in question; and (v)  
 1036 where possible, specific references to the terms and conditions of the permit in question, together with

1037 suggested revisions and alterations of those terms and conditions that the requester considers are needed to  
 1038 conform the permit to the intent and provisions of the basic laws of the ~~State Air Pollution Control Board or~~  
 1039 ~~the State Water Control Board~~, as applicable.

1040 2. Upon completion of the public comment period on a permit action, the Director shall review all timely  
 1041 requests for public hearing filed during the public comment period on the permit action and within 30  
 1042 calendar days following the expiration of the time period for the submission of requests shall grant a public  
 1043 hearing, unless the permittee or applicant agrees to a later date, if the Director finds the following: ~~(a)~~ (i) that  
 1044 there is a significant public interest in the issuance, denial, modification, or revocation of the permit in  
 1045 question as evidenced by receipt of a minimum of 25 individual requests for a public hearing; ~~(b)~~ (ii) that the  
 1046 requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the  
 1047 permit in question; and ~~(c)~~ (iii) that the action requested by the interested party is not on its face inconsistent  
 1048 with, or in violation of, the basic laws of the ~~State Air Pollution Control Board if the permit action is an air~~  
 1049 ~~permit action, or the basic laws of the State Water Control Board if the permit action is a water permit action,~~  
 1050 federal law, or any regulation promulgated thereunder.

1051 3. The Director shall, forthwith, notify by email or mail at his last known address ~~(1)~~ (i) each requester  
 1052 and ~~(2)~~ (ii) the applicant or permittee of the decision to grant or deny a public hearing. If the request for a  
 1053 public hearing is granted, the Director shall schedule the hearing at a time between 45 and 75 days after  
 1054 emailing or mailing of the notice of the decision to grant the public hearing. The Director shall cause, or  
 1055 require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general  
 1056 circulation in the city or county where the facility or operation that is the subject of the permit or permit  
 1057 application is located, at least 30 days before the hearing date. In making its decision, the Department shall  
 1058 consider ~~(A)~~ (a) the verbal and written comments received during the public comment period and public  
 1059 hearing made part of the record, ~~(B)~~ (b) any commentary of the Board, and ~~(C)~~ (c) the agency files. The  
 1060 public comment period shall remain open for 15 days after the close of the public hearing if required by §  
 1061 10.1-1307.01 or § 62.1-44.15:01.

1062 4. In addition, the Director may, in his discretion, convene a public hearing on a permit action.

1063 **§ 10.1-1184.2. Regulations; civil penalties; written notice of violation.**

1064 Prior to assessing any civil penalty pursuant to § 10.1-1309, 10.1-1455, or 62.1-44.15 against any person  
 1065 for an alleged violation of a regulation adopted by ~~a~~ the Board or permit issued by the Department, the  
 1066 Department shall inform such person in writing of the alleged violation, the potential penalties for such  
 1067 violation, and the actions necessary to achieve compliance and remediate the alleged violation. The  
 1068 Department may allow the person 30 days to take such actions and to provide any additional, relevant facts to  
 1069 the Department, including facts that demonstrate a good-faith attempt to achieve compliance. If compliance  
 1070 has not been achieved and the alleged violation remediated after the 30 days, the Department or the Board  
 1071 shall proceed in accordance with § 10.1-1309, 10.1-1455, or 62.1-44.15, as applicable.

1072 For purposes of this section, "Board" means the ~~State Air Pollution Control Board, the Virginia Waste~~  
 1073 ~~Management Board, or the State Water Control Board.~~

1074 **§ 10.1-1185. Appointment of Director; powers and duties of Director.**

1075 The Department shall be headed by a Director appointed by the Governor to serve at his pleasure. The  
 1076 Director shall be an experienced administrator with knowledge of environmental protection and government  
 1077 operation and shall have demonstrated expertise in organizational management and environmental science,  
 1078 environmental law, or environmental policy. The Director of the Department of Environmental Quality shall,  
 1079 under the direction and control of the Governor, exercise such power and perform such duties as are  
 1080 conferred or imposed upon him by law and shall perform such other duties as may be required of him by the  
 1081 Governor and the following ~~Boards: the State Air Pollution Control Board, the State Water Control Board,~~  
 1082 ~~and the Virginia Waste Management Board.~~ The Director or his designee shall serve as executive officer of  
 1083 the  ~~aforementioned Boards~~ Board.

1084 All powers and duties conferred or imposed upon the Executive Director of the Department of Air  
 1085 Pollution Control, the Executive Director of the State Water Control Board, the Administrator of the Council  
 1086 on the Environment, and the Director of the Department of Waste Management are continued and conferred  
 1087 or imposed upon the Director of the Department of Environmental Quality or his designee. Wherever in this  
 1088 title and in the Code of Virginia reference is made to the head of a division, department, or agency hereinafter  
 1089 transferred to this Department, it shall mean the Director of the Department of Environmental Quality.

1090 **§ 10.1-1186. General powers of the Department.**

1091 The Department shall have the following general powers, any of which the Director may delegate as  
 1092 appropriate:

1093 1. Employ such personnel as may be required to carry out the duties of the Department;

1094 2. Make and enter into all contracts and agreements necessary or incidental to the performance of its  
 1095 duties and the execution of its powers under this chapter, including, but not limited to, contracts with the  
 1096 United States, other states, other state agencies and governmental subdivisions of the Commonwealth;

1097 3. Accept grants from the United States government and agencies and instrumentalities thereof and any

1098 other source. To these ends, the Department shall have the power to comply with such conditions and execute  
1099 such agreements as may be necessary, convenient, or desirable;

1100 4. Accept and administer services, property, gifts, and other funds donated to the Department;

1101 5. Implement all regulations as may be adopted by the ~~State Air Pollution Control Board, the State Water~~  
1102 ~~Control Board, and the Virginia Waste Management Board;~~

1103 6. Administer, ~~under the direction of the Boards,~~ funds appropriated to it for environmental programs and  
1104 make contracts related thereto;

1105 7. Advise and coordinate the responses of state agencies to notices of proceedings by the ~~State Water~~  
1106 ~~Control Board Department of Environmental Quality~~ to consider certifications of hydropower projects under  
1107 33 U.S.C. § 1341;

1108 8. Advise interested agencies of the Commonwealth of pending proceedings when the Department of  
1109 Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory  
1110 Commission proceeding or when the Department of Wildlife Resources intervenes in a Federal Energy  
1111 Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the  
1112 proceedings;

1113 9. Notwithstanding any other provision of law and to the extent consistent with federal requirements,  
1114 following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the  
1115 provisions of any law administered by the ~~Boards Board,~~ the Director, or the Department; (ii) any condition  
1116 of a permit or a certification; (iii) any regulations of the ~~Boards Board;~~ or (iv) any case decision, as defined  
1117 in § 2.2-4001, of the ~~Boards Board~~ or Director. The issuance of a special order shall be considered a case  
1118 decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in  
1119 conjunction with issuance of special orders. ~~For purposes of this subdivision, "Boards" means the State Air~~  
1120 ~~Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;~~ and

1121 10. Perform all acts necessary or convenient to carry out the purposes of this chapter.

1122 **§ 10.1-1186.2. Supplemental environmental projects.**

1123 A. As used in this section, "supplemental environmental project" means an environmentally beneficial  
1124 project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1125 B. The ~~State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management~~  
1126 ~~Board, or the Director~~ acting on behalf of ~~one of these boards~~ *the Board* or under his own authority in issuing  
1127 any administrative order, or any court of competent jurisdiction as provided for under this Code, may, in its  
1128 or his discretion and with the consent of the person subject to the order, provide for such person to undertake  
1129 one or more supplemental environmental projects. The project shall have a reasonable geographic nexus to  
1130 the violation or, if no such project is available, shall advance at least one of the declared objectives of the  
1131 environmental law or regulation that is the basis of the enforcement action. Performance of such projects  
1132 shall be enforceable in the same manner as any other provision of the order.

1133 C. The following categories of projects may qualify as supplemental environmental projects, provided the  
1134 project otherwise meets the requirements of this section: public health, pollution prevention, pollution  
1135 reduction, environmental restoration and protection, environmental compliance promotion, and emergency  
1136 planning and preparedness. In determining the appropriateness and value of a supplemental environmental  
1137 project, the following factors shall be considered by the enforcement authority: net project costs, benefits to  
1138 the public or the environment, innovation, impact on minority or ~~low income~~ *low-income* populations,  
1139 multimedia impact, and pollution prevention. The costs of those portions of a supplemental environmental  
1140 project that are funded by state or federal low-interest loans, contracts, or grants shall be deducted from the  
1141 net project cost in evaluating the project. In each case in which a supplemental environmental project is  
1142 included as part of a settlement, an explanation of the project with any appropriate supporting documentation  
1143 shall be included as part of the case file.

1144 D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant to  
1145 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1146 E. Any decision whether or not to agree to a supplemental environmental project is within the sole  
1147 discretion of the applicable board, official, or court and shall not be subject to appeal.

1148 F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable federal  
1149 law or any applicable requirement for the Commonwealth to obtain or maintain federal delegation or  
1150 approval of any regulatory program.

1151 **§ 10.1-1186.2:1. Impact of electric generating facilities.**

1152 A. The Department ~~and the State Air Pollution Control Board~~ *shall* have the authority to consider the  
1153 cumulative impact of new and proposed electric generating facilities within the Commonwealth on attainment  
1154 of the national ambient air quality standards.

1155 B. The Department shall enter into a memorandum of agreement with the State Corporation Commission  
1156 regarding the coordination of reviews of the environmental impacts of proposed electric generating facilities  
1157 that must obtain certificates from the State Corporation Commission. When considering the environmental  
1158 impact of any renewable energy (defined in § 56-576) electrical utility facility, the Department shall consult

1159 with interested agencies of the Commonwealth that have expertise in natural resource management. The  
 1160 Department shall submit recommendations to the State Corporation Commission that take into account the  
 1161 information and comments submitted by such natural resource agencies concerning the potential  
 1162 environmental impacts of the proposed electric generating facility. The Department's recommendations shall  
 1163 include: (i) specific mitigation measures considered necessary to minimize adverse environmental impacts;  
 1164 (ii) any additional site-specific studies considered to be necessary; and (iii) the scope and duration of any  
 1165 such studies. Nothing in this subsection shall alter or affect the Rules of Practice and Procedure of the State  
 1166 Corporation Commission.

1167 C. Prior to the close of the Commission's record on an application for certification of an electric  
 1168 generating facility pursuant to § 56-580, the Department shall provide to the State Corporation Commission a  
 1169 list of all environmental permits and approvals that are required for the proposed electric generating facility  
 1170 and shall specify any environmental issues, identified during the review process, that are not governed by  
 1171 those permits or approvals or are not within the authority of, and not considered by, the Department or other  
 1172 participating governmental entity in issuing such permits or approvals. The Department may recommend to  
 1173 the Commission that the Commission's record remain open pending completion of any required  
 1174 environmental review, approval, or permit proceeding. All agencies of the Commonwealth shall provide  
 1175 assistance to the Department, as requested by the Director, in preparing the information required by this  
 1176 subsection.

1177 **§ 10.1-1186.3. Additional powers of Board and Department; mediation; alternative dispute**  
 1178 **resolution.**

1179 A. ~~The State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste~~  
 1180 ~~Management Board, in their~~ *its* discretion, or the Director, in his discretion, may employ mediation as defined  
 1181 in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve  
 1182 underlying issues, reach a consensus, or compromise on contested issues. An "appropriate case" means any  
 1183 process related to the development of a regulation by the Board or the issuance of a permit by the Department  
 1184 in which it is apparent that there are significant issues of disagreement among interested persons and for  
 1185 which the Board or the Department finds that the use of a mediation or dispute resolution proceeding is in the  
 1186 public interest. ~~The Board's Board~~ or the Department shall consider not using a mediation or dispute  
 1187 resolution proceeding if:

1188 1. A definitive or authoritative resolution of the matter is required for precedential value, and such a  
 1189 proceeding is not likely to be accepted generally as an authoritative precedent;

1190 2. The matter involves or may bear upon significant questions of state policy that require additional  
 1191 procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a  
 1192 recommended policy for the Department;

1193 3. Maintaining established policies is of special importance, so that variations among individual decisions  
 1194 are not increased and such a proceeding would not likely reach consistent results among individual decisions;

1195 4. The matter significantly affects persons or organizations who are not parties to the proceeding;

1196 5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding  
 1197 cannot provide such a record; and

1198 6. The Board or the Department must maintain continuing jurisdiction over the matter with the authority  
 1199 to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution  
 1200 proceeding would interfere with the Department or ~~the Board's Board~~ fulfilling that requirement.

1201 Mediation and alternative dispute resolution as authorized by this section are voluntary procedures ~~which~~  
 1202 ~~that~~ supplement rather than limit other dispute resolution techniques available to the ~~Board's Board~~ or the  
 1203 Department. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only  
 1204 with the consent and participation of the permit applicant and shall be terminated at the request of the permit  
 1205 applicant.

1206 B. The decision to employ mediation or a dispute resolution proceeding is in ~~a~~ *the* Board's or the  
 1207 Department's sole discretion and is not subject to judicial review.

1208 C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon ~~a~~ *the* Board  
 1209 or the Department; but may be considered by the Department in issuing a permit or by ~~a~~ *the* Board in  
 1210 promulgating a regulation.

1211 ~~Each~~ *The* Board and the Department shall adopt rules and regulations, in accordance with the  
 1212 Administrative Process Act, for the implementation of this section. Such rules and regulations shall include  
 1213 (i) standards and procedures for the conduct of mediation and dispute resolution, including an opportunity for  
 1214 interested persons identified by the Department to participate in the proceeding; (ii) the appointment and  
 1215 function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties to voluntarily compromise or  
 1216 settle contested issues; and (iii) procedures to protect the confidentiality of papers, work product, or other  
 1217 materials.

1218 E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution  
 1219 proceeding shall govern all such proceedings held pursuant to this section except where the Department or a

1220 *the Board uses or relies on information obtained in the course of such proceeding in issuing a permit or*  
 1221 *promulgating a regulation, respectively.*

1222 Nothing in this section shall create or alter any right, action, or cause of action, or be interpreted or  
 1223 applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with applicable  
 1224 federal law or with any applicable requirement for the Commonwealth to obtain or maintain federal  
 1225 delegation or approval of any regulatory program.

1226 **§ 10.1-1186.4. Enforcement powers; federal court.**

1227 In addition to the authority of the ~~State Air Pollution Control Board, the State Water Control Board, the~~  
 1228 ~~Virginia Waste Management Board~~ and the Director to bring actions in the courts of the Commonwealth to  
 1229 enforce any law, regulation, case decision, or condition of a permit or certification, the Attorney General is  
 1230 hereby authorized on behalf of ~~such boards~~ *the Board* or the Director to seek to intervene pursuant to Rule 24  
 1231 of the Federal Rules of Civil Procedure in any action then pending in a federal court in order to resolve a  
 1232 dispute already being litigated in that court by the United States through the U.S. Environmental Protection  
 1233 Agency.

1234 **§ 10.1-1187.1. Definitions.**

1235 "~~Board or Boards~~" means the ~~State Air Pollution Control Board, the State Water Control Board, and the~~  
 1236 ~~Virginia Waste Management Board.~~

1237 "~~Department~~" means the Department of Environmental Quality.

1238 "~~Director~~" means the Director of the Department of Environmental Quality.

1239 "Environmental Management System" means a comprehensive, cohesive set of documented policies and  
 1240 procedures adopted by a facility or person and used to establish environmental goals, to meet and maintain  
 1241 those goals, to evaluate environmental performance, and to achieve measurable or noticeable improvements  
 1242 in environmental performance, through planning, documented management and operational practices,  
 1243 operational changes, ~~self assessments~~ *self-assessments*, and management review. ~~The term shall include~~  
 1244 "*Environmental Management System*" includes, but is not ~~be~~ limited to, any such system developed in  
 1245 accordance with the International Standards of Operation 14001 standards.

1246 "E2" means an environmental enterprise.

1247 "E3" means an exemplary environmental enterprise.

1248 "E4" means an extraordinary environmental enterprise.

1249 "Facility" means a manufacturing, business, agricultural, or governmental site or installation involving  
 1250 one or more contiguous buildings or structures under common ownership or management.

1251 "Record of sustained compliance" means that the person or facility (i) has no judgment or conviction  
 1252 entered against it, or against any key personnel of the person or facility or any person with an ownership  
 1253 interest in the facility for a criminal violation of environmental protection laws of the United States, the  
 1254 Commonwealth, or any other state in the previous five years; (ii) has been neither the cause of, nor liable for,  
 1255 more than two significant environmental violations in the previous three years; (iii) has no unresolved notices  
 1256 of violations or potential violations of environmental requirements with the Department or ~~one of the Boards~~  
 1257 ~~the Board~~; (iv) is in compliance with the terms of any order or decree, executive compliance agreement, or  
 1258 related enforcement measure issued by the Department, ~~one of the Boards~~ ~~the Board~~, or the U.S.  
 1259 Environmental Protection Agency; and (v) has not demonstrated in any other way an unwillingness or  
 1260 inability to comply with environmental protection requirements.

1261 **§ 10.1-1187.6. Approval of alternate compliance methods.**

1262 A. To the extent consistent with federal law and notwithstanding any other provision of law, the ~~Air~~  
 1263 ~~Pollution Control Board, the Waste Management Board, and the State Water Control Board~~ may grant  
 1264 alternative compliance methods to the regulations adopted pursuant to ~~their~~ *its* authorities, ~~respectively~~, under  
 1265 §§ 10.1-1308, 10.1-1402, and 62.1-44.15 for persons or facilities that have been accepted by the Department  
 1266 as meeting the criteria for E3 and E4 facilities under § 10.1-1187.3, including but not limited to changes to  
 1267 monitoring and reporting requirements and schedules, streamlined submission requirements for permit  
 1268 renewals, the ability to make certain operational changes without prior approval, and other changes that  
 1269 would not increase a facility's impact on the environment. Such alternative compliance methods may allow  
 1270 alternative methods for achieving compliance with prescribed regulatory standards, provided that the person  
 1271 or facility requesting the alternative compliance method demonstrates that the method will (i) meet the  
 1272 purpose of the applicable regulatory standard; (ii) promote achievement of those purposes through increased  
 1273 reliability, efficiency, or cost effectiveness; and (iii) afford environmental protection equal to or greater than  
 1274 that provided by the applicable regulatory standard. No alternative compliance method shall be approved that  
 1275 would alter an ambient air quality standard, ground water protection standard, or water quality standard and  
 1276 no alternative compliance method shall be approved that would increase the pollutants released to the  
 1277 environment, increase impacts to state waters, or otherwise result in a loss of wetland acreage.

1278 B. Notwithstanding any other provision of law, an alternate compliance method may be approved under  
 1279 this section after at least 30 days' public notice and opportunity for comment; and a determination that the  
 1280 alternative compliance method meets the requirements of this section.

1281 C. Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable

1282 federal law or other requirement necessary for the Commonwealth to obtain or retain federal delegation or  
 1283 approval of any regulatory program. Before approving an alternate compliance method affecting any such  
 1284 program, ~~each the~~ Board may obtain the approval of the federal agency responsible for such delegation or  
 1285 approval. ~~Any one of the Boards~~ *The Board* may withdraw approval of the alternate compliance method at  
 1286 any time if any conditions under which the alternate compliance method was originally approved change; or  
 1287 if the recipient has failed to comply with any of the alternative compliance method requirements.

1288 D. Upon approval of the alternative compliance method under this section, the alternative compliance  
 1289 method shall be incorporated into the relevant permits as a minor permit modification with no associated fee.  
 1290 The permits shall also contain any such provisions that shall go into effect in the event that the participant  
 1291 fails to fulfill its obligations under the variance; or is removed from the program for reasons specified by the  
 1292 Director under subsection B of § 10.1-1187.4.

1293 **§ 10.1-1197.3. Purposes of Fund; loans to small businesses; administrative costs.**

1294 A. Moneys in the Fund shall be used to make loans or to guarantee loans to small businesses for the  
 1295 purchase and installation of environmental pollution control and prevention equipment certified by the  
 1296 Department as meeting the following requirements:

1297 1. The air pollution control equipment is needed by the small business to comply with the federal Clean  
 1298 Air Act (42 U.S.C. § 7401 et seq.); or

1299 2. The pollution control equipment will allow the small business to implement voluntary pollution  
 1300 prevention measures.

1301 Moneys in the Fund may also be used to make loans or to guarantee loans to small businesses for the  
 1302 installation of voluntary agricultural best management practices, as defined in § 58.1-339.3.

1303 B. The Department or its designated agent shall determine the terms and conditions of any loan. All loans  
 1304 shall be evidenced by appropriate security as determined by the Department or its designated agent. The  
 1305 Department, or its agent, may require any documents, instruments, certificates, or other information deemed  
 1306 necessary or convenient in connection with any loan from the Fund.

1307 C. A portion of the Fund balance may be used to cover the reasonable and necessary costs of  
 1308 administering the Fund. Unless otherwise authorized by the Governor or his designee, the costs of  
 1309 administering the Fund shall not exceed a base year amount of \$65,000 per year, using fiscal year 2000 as the  
 1310 base year, adjusted annually by the Consumer Price Index.

1311 D. The Fund shall not be used to make loans to small businesses for the purchase and installation of  
 1312 equipment needed to comply with an enforcement action by the Department, ~~the State Air Pollution Control~~  
 1313 ~~Board, the State Water Control Board, or the Virginia Waste Management Board.~~

1314 **§ 10.1-1197.9. Enforcement; civil penalties; criminal penalties; injunctive relief.**

1315 A. Any person violating or failing, neglecting, or refusing to obey any provision of this article, any  
 1316 regulation, case decision, or order, or any certification or permit-by-rule condition may be compelled to  
 1317 comply by injunction, mandamus, or other appropriate remedy.

1318 B. Without limiting the remedies that may be obtained under subsection A, any person violating or failing,  
 1319 neglecting, or refusing to obey any regulation, case decision, or order, any provision of this article, or any  
 1320 certification or permit-by-rule condition shall be subject, in the discretion of the court, to a civil penalty not to  
 1321 exceed \$32,500 for each violation. Each day of violation shall constitute a separate offense. Such civil  
 1322 penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia  
 1323 Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.). Such civil penalties  
 1324 may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city,  
 1325 or town in which the violation occurred, to be used to abate environmental pollution in such manner as the  
 1326 court may, by order, direct, except that where the person in violation is the county, city, or town itself, or its  
 1327 agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer  
 1328 into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25.

1329 C. 1. Nothing in this article shall affect the enforcement authorities in laws administered by the ~~State Air~~  
 1330 ~~Pollution Control Board, the State Water Control Board, or the Virginia Waste Management Board~~ or ~~the~~  
 1331 ~~Department~~, nor shall it affect enforcement authorities of the Department as described in § 10.1-1186.

1332 2. The Department is authorized to issue orders to require any person to comply with the provisions of this  
 1333 article, any condition of a permit by rule or certification, or any regulations promulgated by the Department  
 1334 or to comply with any order or case decision, as defined in § 2.2-4001, of the Department. Any such order  
 1335 shall be issued only after a proceeding or hearing in accordance with § 2.2-4019 or 2.2-4020 with reasonable  
 1336 notice to the affected person of the time, place and purpose thereof. The provisions of this section shall not  
 1337 affect the authority of the Department to issue separate orders and regulations to meet any emergency as  
 1338 described in ~~subsection~~ ~~subdivision~~ 5.

1339 3. With the consent of any person who has violated or failed, neglected or refused to obey any regulation  
 1340 or order of the Department, any condition of a permit by rule, certification or any provision of this article, the  
 1341 Department may provide, in an order issued by the Department against such person, for the payment of civil  
 1342 charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil

1343 charges shall be levied instead of any appropriate civil penalty, which could be imposed under this section.  
 1344 Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia  
 1345 Environmental Emergency Response Fund pursuant to Chapter 25 of this title (§ 10.1-2500 et seq.).

1346 4. In addition to all other available remedies, the Department may issue administrative orders for the  
 1347 violation of (i) any law or regulation administered by the Department; (ii) any condition of a permit by rule or  
 1348 certificate issued pursuant to this article; or (iii) any case decision or order of the Department. Issuance of an  
 1349 administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing  
 1350 before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued  
 1351 pursuant to this subsection may include civil penalties of up to \$32,500 per violation not to exceed \$100,000  
 1352 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the  
 1353 order is based. The Department may assess penalties under this subsection if (a) the person has been issued at  
 1354 least two written notices of alleged violation by the Department for the same or substantially related  
 1355 violations at the same site, (b) such violations have not been resolved by demonstration that there was no  
 1356 violation, by an order issued by the Department or the Director, or by other means, (c) at least 130 days have  
 1357 passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations  
 1358 have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty  
 1359 assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental  
 1360 harm, the compliance history of the facility or person, any economic benefit realized from the  
 1361 noncompliance, and the ability of the person to pay the penalty. The Department shall provide the person  
 1362 with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that  
 1363 assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the  
 1364 State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The  
 1365 issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined  
 1366 in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific  
 1367 provision of law violated, and information on the process for obtaining a final decision or fact finding from  
 1368 the Department on whether or not a violation has occurred, and nothing in this section shall preclude an  
 1369 owner from seeking such a determination. Orders issued pursuant to this subsection shall become effective  
 1370 five days after having been delivered to the affected persons or mailed by certified mail to the last known  
 1371 address of such persons. The Department shall develop and provide an opportunity for public comment on  
 1372 guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each  
 1373 violation based upon the severity of the violations, the extent of any potential or actual environmental harm,  
 1374 the compliance history of the facility or person, any economic benefit realized from the noncompliance, and  
 1375 the ability of the person to pay the penalty.

1376 5. Should the Department find that any person is grossly affecting the public health, safety, or welfare, or  
 1377 the health of animals, fish, or aquatic life or the environment, or such effects are imminent, the Department  
 1378 shall issue, without a hearing, an emergency administrative order directing the person to cease the activity  
 1379 immediately and undertake any needed corrective action; and shall within 10 days hold a hearing, after  
 1380 reasonable notice as to the time and place thereof to the person, to affirm, modify, amend, or cancel the  
 1381 emergency administrative order. If the Department finds that a person who has been issued an administrative  
 1382 order or an emergency administrative order is not complying with the order's terms, the Department may  
 1383 utilize the enforcement and penalty provisions of this article to secure compliance.

1384 6. The Department shall be entitled to an award of reasonable attorneys' attorney fees and costs in any  
 1385 action brought by the Department under this article in which it substantially prevails on the merits of the case,  
 1386 unless special circumstances would make an award unjust.

1387 D. Any person willfully violating or refusing, failing, or neglecting to comply with any provision of this  
 1388 article or any regulation, permit by rule, order, or certification under this article shall be is guilty of a Class 1  
 1389 misdemeanor unless a different penalty is specified.

1390 E. In addition to the penalties provided above, any person who knowingly violates or refuses, fails, or  
 1391 neglects to comply with any provision of this article or any regulation, permit by rule, order, or certification  
 1392 under this article shall be is guilty of a felony punishable by a term of imprisonment of not less than one year  
 1393 nor more than five years and a fine of not more than \$32,500 for each violation, either or both. The provisions  
 1394 of this subsection shall be deemed to constitute a lesser included offense of the violation set forth under  
 1395 subsection F.

1396 F. Any person who knowingly violates or refuses, fails, or neglects to comply with any provision of this  
 1397 article or any regulation, permit by rule, order, or certification under this article and who knows at the time  
 1398 that he thereby places another person in imminent danger of death or serious bodily injury; shall, upon  
 1399 conviction, be is guilty of a felony punishable by a term of imprisonment of not less than two years nor more  
 1400 than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall,  
 1401 upon conviction of violating this section, be subject to a fine not exceeding the greater of \$1 million or an  
 1402 amount that is three times the economic benefit realized by the defendant as a result of the offense. The  
 1403 maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction

1404 of the same person.

1405 G. Criminal prosecutions under this article shall be commenced within three years after discovery of the  
1406 offense, notwithstanding the provisions of any other statute.

1407 **§ 10.1-1230. Definitions.**

1408 As used in this chapter:

1409 "Authority" means the Virginia Resources Authority.

1410 "Board" means the Board of Environmental Resources.

1411 "Bona fide prospective purchaser" means a person or a tenant of a person who acquires ownership, or  
1412 proposes to acquire ownership, of real property after the release of hazardous substances occurred.

1413 "Brownfield" means real property; the expansion, redevelopment, or reuse of which may be complicated  
1414 by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

1415 "Cost" as applied to any project financed under the provisions of this chapter, means the reasonable and  
1416 necessary costs incurred for carrying out all works and undertakings necessary or incident to the  
1417 accomplishment of any project. It includes, without limitation, all necessary developmental, planning and  
1418 feasibility studies, surveys, plans and specifications; architectural, engineering, financial, legal or other  
1419 special services; site assessments, remediation, containment, and demolition or removal of existing structures;  
1420 the costs of acquisition of land and any buildings and improvements thereon, including the discharge of any  
1421 obligation of the seller of such land, buildings or improvements; labor; materials, machinery and equipment;  
1422 the funding of accounts and reserves that the Authority may require; the reasonable costs of financing  
1423 incurred by the local government in the course of the development of the project; carrying charges incurred  
1424 prior to completion of the project, and the cost of other items that the Authority determines to be reasonable  
1425 and necessary.

1426 "Department" means the Department of Environmental Quality.

1427 "Director" means the Director of the Department of Environmental Quality.

1428 "Fund" means the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund.

1429 "Innocent land owner" means a person who holds any title, security interest or any other interest in a  
1430 brownfield site and who acquired ownership of the real property after the release of hazardous substances  
1431 occurred.

1432 "Local government" means any county, city, town, municipal corporation, authority, district, commission,  
1433 or political subdivision of the Commonwealth created by the General Assembly or otherwise created pursuant  
1434 to the laws of the Commonwealth or any combination of the foregoing.

1435 "Partnership" means the Virginia Economic Development Partnership.

1436 "Person" means an individual, corporation, partnership, association, governmental body, municipal  
1437 corporation, public service authority, or any other legal entity.

1438 "Project" means all or any part of the following activities necessary or desirable for the restoration and  
1439 redevelopment of a brownfield site: (i) environmental or cultural resource site assessments, (ii) monitoring,  
1440 remediation, cleanup, or containment of property to remove hazardous substances, hazardous wastes, solid  
1441 wastes or petroleum, (iii) the lawful and necessary removal of human remains, the appropriate treatment of  
1442 grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the  
1443 stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv)  
1444 demolition and removal of existing structures, or other site work necessary to make a site or certain real  
1445 property usable for economic development, and (v) development of a remediation and reuse plan.

1446 **§ 10.1-1232. Voluntary Remediation Program.**

1447 A. The ~~Virginia Waste Management~~ Board shall promulgate regulations to allow persons who own,  
1448 operate, have a security interest in, or enter into a contract for the purchase of contaminated property to  
1449 voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes, or petroleum. The  
1450 regulations shall apply where remediation has not clearly been mandated by the ~~United States~~ U.S.  
1451 Environmental Protection Agency, the Department, or a court pursuant to the Comprehensive Environmental  
1452 Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and  
1453 Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State  
1454 Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of  
1455 those statutes has been waived. The regulations shall provide for the following:

1456 1. The establishment of methodologies to determine site-specific risk-based remediation standards, which  
1457 shall be no more stringent than applicable or appropriate relevant federal standards for soil, groundwater and  
1458 sediments, taking into consideration scientific information regarding the following: (i) protection of public  
1459 health and the environment, (ii) the future industrial, commercial, residential, or other use of the property to  
1460 be remediated and of surrounding properties, (iii) reasonably available and effective remediation technology  
1461 and analytical quantitation technology, (iv) the availability of institutional or engineering controls that are  
1462 protective of human health or the environment, and (v) natural background levels for hazardous constituents;

1463 2. The establishment of procedures that minimize the delay and expense of the remediation, to be  
1464 followed by a person volunteering to remediate a release and by the Department in processing submissions



1465 and overseeing remediation;

1466 3. The issuance of certifications of satisfactory completion of remediation, based on then-present  
1467 conditions and available information, where voluntary cleanup achieves applicable cleanup standards or  
1468 where the Department determines that no further action is required;

1469 4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary  
1470 cleanup consistent with applicable federal law; and

1471 5. Registration fees to be collected from persons conducting voluntary remediation to defray the actual  
1472 reasonable costs of the voluntary remediation program expended at the site.

1473 B. Persons conducting voluntary remediations pursuant to an agreement with the Department entered into  
1474 prior to the promulgation of those regulations may elect to complete the cleanup in accordance with such an  
1475 agreement or the regulations.

1476 C. Certification of satisfactory completion of remediation shall constitute immunity to an enforcement  
1477 action under *Chapter 13* (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the  
1478 State Water Control Law (§ 62.1-44.2 et seq.), ~~Chapter 13~~ (§ 10.1-1300 et seq.) of this title, or any other  
1479 applicable law.

1480 D. At the request of a person who owns, operates, holds a security interest in, or contracts for the purchase  
1481 of property from which the contamination to be voluntarily remediated originates, the Department is  
1482 authorized to seek temporary access to private and public property not owned by such person conducting the  
1483 voluntary remediation as may be reasonably necessary for such person to conduct the voluntary remediation.  
1484 Such request shall include a demonstration that the person requesting access has used reasonable effort to  
1485 obtain access by agreement with the property owner. Such access, if granted, shall be granted for only the  
1486 minimum amount of time necessary to complete the remediation and shall be exercised in a manner that  
1487 minimizes the disruption of ongoing activities and compensates for actual damages. The person requesting  
1488 access shall reimburse the Commonwealth for reasonable, actual, and necessary expenses incurred in seeking  
1489 or obtaining access. Denial of access to the Department by a property owner creates a rebuttable presumption  
1490 that such owner waives all rights, claims, and causes of action against the person volunteering to perform  
1491 remediation for costs, losses, or damages related to the contamination as to claims for costs, losses, or  
1492 damages arising after the date of such denial of access to the Department. A property owner who has denied  
1493 access to the Department may rebut the presumption by showing that he had good cause for the denial or that  
1494 the person requesting that the Department obtain access acted in bad faith.

1495 **§ 10.1-1234. Limitations on liability.**

1496 A. The Director may, consistent with programs developed under the federal acts, make a determination to  
1497 limit the liability of lenders, innocent purchasers or landowners, de minimis contributors, or others who have  
1498 grounds to claim limited responsibility for a containment or cleanup that may be required pursuant to *the*  
1499 *State Air Pollution Control Law* (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et  
1500 seq.), the State Water Control Law (§ 62.1-44.2 et seq.), ~~the State Air Pollution Control Law (§ 10.1-1300 et~~  
1501 ~~seq.)~~; or any other applicable law.

1502 B. A bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be  
1503 required at a brownfield site pursuant to *the State Air Pollution Control Law* (§ 10.1-1300 et seq.), the  
1504 Virginia Waste Management Act (§ 10.1-1400 et seq.), *or* the State Water Control Law (§ 62.1-44.2 et seq.);  
1505 ~~or the State Air Pollution Control Law (§ 10.1-1300 et seq.)~~ if (i) the person did not cause, contribute, or  
1506 consent to the release or threatened release; (ii) the person is not liable or potentially liable through any  
1507 direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the  
1508 result of a reorganization of a business entity that was potentially liable; (iii) the person exercises appropriate  
1509 care with respect to hazardous substances found at the facility by taking reasonable steps to stop any  
1510 continuing release, prevent any threatened future release, and prevent or limit human, environmental, or  
1511 natural resource exposure to any previously released hazardous substances; and (iv) the person does not  
1512 impede the performance of any response action. These provisions shall not apply to sites subject to the  
1513 Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

1514 C. An innocent land owner who holds title, security interest, or any other interest in a brownfield site shall  
1515 not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to *the State*  
1516 *Air Pollution Control Law* (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.),  
1517 *or* the State Water Control Law (§ 62.1-44.2 et seq.); ~~or the State Air Pollution Control Law (§ 10.1-1300 et~~  
1518 ~~seq.)~~ if (i) the person did not cause, contribute, or consent to the release or threatened release; (ii) the person  
1519 is not liable or potentially liable through any direct or indirect familial relationship or any contractual,  
1520 corporate, or financial relationship or is not the result of a reorganization of a business entity that was  
1521 potentially liable; (iii) the person made all appropriate inquiries into the previous uses of the facility in  
1522 accordance with generally accepted good commercial and customary standards and practices, including those  
1523 established by federal law; (iv) the person exercises appropriate care with respect to hazardous substances  
1524 found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future  
1525 release, and prevent or limit human, environmental, or natural resource exposure to any previously released

1526 hazardous substances; and (v) the person does not impede the performance of any response action and if  
 1527 either (a) at the time the person acquired the interest, he did not know and had no reason to know that any  
 1528 hazardous substances had been or were likely to have been disposed of on, in, or at the site; or (b) the person  
 1529 is a government entity that acquired the site by escheat or through other involuntary transfer or acquisition.  
 1530 These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. §  
 1531 6901 et seq.).

1532 D. A person that owns real property that is contiguous to or otherwise similarly situated with respect to,  
 1533 and that is or may be contaminated by a release or threatened release of a hazardous substance from real  
 1534 property that is not owned by that person shall not be considered liable for a containment or cleanup that may  
 1535 be required pursuant to *the State Air Pollution Control Law* (§ 10.1-1300 et seq.), the Virginia Waste  
 1536 Management Act (§ 10.1-1400 et seq.), or the State Water Control Law (§ 62.1-44.2 et seq.); ~~or the State Air~~  
 1537 ~~Pollution Control Law (§ 10.1-1300 et seq.)~~ if the person did not cause, contribute, or consent to the release  
 1538 or threatened release, the person is not liable or potentially liable through any direct or indirect familial  
 1539 relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a  
 1540 business entity that was potentially liable, and if such person provides full cooperation, assistance, and access  
 1541 to persons that are authorized to conduct response actions at the facility from which there has been a release.

1542 E. The provisions of this section shall not otherwise limit the authority of the Department; ~~the State Water~~  
 1543 ~~Control Board, the Virginia Waste Management Board, or the State Air Pollution Control Board~~ to require  
 1544 any person responsible for the contamination or pollution to contain or clean-up sites where solid or  
 1545 hazardous waste or other substances have been improperly managed.

1546 **§ 10.1-1236. Access to abandoned brownfield sites.**

1547 A. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for  
 1548 access to an abandoned brownfield site in order to investigate contamination, to abate any hazard caused by  
 1549 the improper management of substances within the jurisdiction of the Board, or to remediate the site. The  
 1550 petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner,  
 1551 operator or other responsible party and (ii) a plan approved by the Director and which is consistent with  
 1552 applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be  
 1553 considered a case decision as defined by § 2.2-4001.

1554 B. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or  
 1555 state law or regulation who performs any investigative, abatement, or remediation activities pursuant to this  
 1556 section shall not become subject to civil enforcement or remediation action under ~~Chapter 14~~ *the Virginia*  
 1557 *Waste Management Act* (§ 10.1-1400 et seq.) ~~of this title~~ or other applicable state laws or to private civil suits  
 1558 related to contamination not caused by its investigative, abatement, or remediation activities.

1559 C. This section shall not in any way limit the authority of the ~~Virginia Waste Management Board, the~~  
 1560 ~~Director, or the Department otherwise created by Chapter 14~~ (§ 10.1-1400 et seq.) ~~of this title.~~

1561 CHAPTER 13.

1562 AIR POLLUTION CONTROL BOARD LAW.

1563 **§ 10.1-1300. Definitions.**

1564 As used in this chapter, unless the context requires a different meaning:

1565 "Advisory Board" means the State Advisory Board on Air Pollution.

1566 "Air pollution" means the presence in the outdoor atmosphere of one or more substances ~~which~~ *that* are or  
 1567 may be harmful or injurious to human health, welfare, or safety, to animal or plant life, or to property, or  
 1568 which unreasonably interfere with the enjoyment by the people of life or property.

1569 "Board" means the ~~State Air Pollution Control Board~~ *of Environmental Resources*.

1570 "Department" means the Department of Environmental Quality.

1571 "Director" or "Executive Director" means the Executive Director of the Department of Environmental  
 1572 Quality.

1573 "Owner" shall have no connotation other than that customarily assigned to the term "person," but shall  
 1574 include bodies politic and corporate, associations, partnerships, personal representatives, trustees, and  
 1575 committees, as well as individuals.

1576 "Person" means an individual, corporation, partnership, association, a governmental body, a municipal  
 1577 corporation, or any other legal entity.

1578 "Special order" means a special order issued under § 10.1-1309.

1579 "Wood heater" means a wood stove, pellet stove, wood-fired hydronic heater, wood-burning forced-air  
 1580 furnace, or masonry wood heater, any of which is solely designed for heating a home or a business and with  
 1581 either (i) uncontrolled fine particulate matter with an aerodynamic diameter less than or equal to 2.5  
 1582 micrometers (PM2.5) emissions of less than 10 tons per year or with a maximum heat input of less than  
 1583 1,000,000 Btu/hr or (ii) uncontrolled fine particulate matter with an aerodynamic diameter less than or equal  
 1584 to 10 micrometers (PM10) emissions of less than 15 tons per year or with a maximum heat input of less than  
 1585 1,000,000 Btu/hr.

1586 **§ 10.1-1400. Definitions.**

1587 As used in this chapter, unless the context requires a different meaning:

1588 "Advanced recycling" means a manufacturing process for the conversion of post-use polymers and  
 1589 recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, liquid fuels, waxes,  
 1590 lubricants, or other products through processes that include pyrolysis, gasification, depolymerization,  
 1591 reforming, hydrogenation, solvolysis, catalytic cracking, and similar processes. "Advanced recycling"  
 1592 produces recycled products, including monomers, oligomers, plastics, plastics and chemical feedstocks, basic  
 1593 and unfinished chemicals, crude oil, naphtha, liquid transportation fuels, coatings, waxes, lubricants, and  
 1594 other basic hydrocarbons.

1595 "Advanced recycling facility" means a facility that, using advanced recycling, receives, stores, and  
 1596 converts post-use polymers and recovered feedstocks that it receives. An "advanced recycling facility" shall  
 1597 be subject to all applicable federal and state environmental laws and regulations.

1598 "Applicant" means any and all persons seeking or holding a permit required under this chapter.

1599 "Board" means the ~~Virginia Waste Management~~ Board of *Environmental Resources*.

1600 "Composting" means the manipulation of the natural aerobic process of decomposition of organic  
 1601 materials to increase the rate of decomposition.

1602 "Department" means the Department of Environmental Quality.

1603 "Depolymerization" means a manufacturing process in which post-use polymers are broken into smaller  
 1604 molecules, including monomers and oligomers; raw, intermediate, or final products; plastics and chemical  
 1605 feedstocks; basic and unfinished chemicals; crude oil; naphtha; liquid transportation fuels; waxes; lubricants;  
 1606 coatings; and other products.

1607 "Director" means the Director of the Department of Environmental Quality.

1608 "Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the  
 1609 Director, which includes:

1610 1. The full name and business address of all key personnel;

1611 2. The full name and business address of any entity, other than a natural person, that collects, transports,  
 1612 treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity  
 1613 interest of five percent or more;

1614 3. A description of the business experience of all key personnel listed in the disclosure statement;

1615 4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or  
 1616 disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

1617 5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by  
 1618 consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any  
 1619 state, federal, or local authority, within the past 10 years, that are pending or have concluded with a finding of  
 1620 violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law,  
 1621 regulation, or requirement relating to the collection, transportation, treatment, storage, or disposal of solid  
 1622 waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key  
 1623 personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the  
 1624 equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery;  
 1625 extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in  
 1626 the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful  
 1627 manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or  
 1628 explosives; violation of the Drug Control Act (§ 54.1-3400 et seq.); racketeering; or violation of antitrust  
 1629 laws;

1630 6. A listing of all agencies outside the Commonwealth that have regulatory responsibility over the  
 1631 applicant or have issued any environmental permit or license to the applicant within the past 10 years, in  
 1632 connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or  
 1633 hazardous waste;

1634 7. Any other information about the applicant and the key personnel that the Director may require that  
 1635 reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and  
 1636 competently operate a solid waste management facility in Virginia; and

1637 8. The full name and business address of any member of the local governing body or planning  
 1638 commission in which the solid waste management facility is located or proposed to be located, who holds an  
 1639 equity interest in the facility.

1640 "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid  
 1641 waste into or on any land or water so that such solid waste or any constituent thereof may enter the  
 1642 environment or be emitted into the air or discharged into any waters, including ground waters.

1643 "Equity" includes both legal and equitable interests.

1644 "Federal acts" means any act of Congress providing for waste management and regulations promulgated  
 1645 thereunder.

1646 "Gasification" means a manufacturing process through which recovered feedstocks are heated and  
 1647 converted in an oxygen-deficient atmosphere into a fuel and gas mixture that is then converted to crude oil,  
 1648 diesel fuel, gasoline, home heating oil, ethanol, transportation fuel, other fuels, chemicals, waxes, lubricants,

1649 chemical feedstocks, diesel and gasoline blendstocks, or other valuable raw, intermediate, or final products  
1650 that are returned to economic utility in the form of raw materials, products, or fuels.

1651 "Hazardous material" means a substance or material in a form or quantity that may pose an unreasonable  
1652 risk to health, safety, or property when transported, and which the U.S. Secretary of Transportation has so  
1653 designated by regulation or order.

1654 "Hazardous substance" means a substance listed under the federal Comprehensive Environmental  
1655 Response Compensation and Liability Act, P.L. 96-510.

1656 "Hazardous waste" means a solid waste or combination of solid waste that because of its quantity,  
1657 concentration or physical, chemical, or infectious characteristics may:

1658 1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or  
1659 incapacitating illness; or

1660 2. Pose a substantial present or potential hazard to human health or the environment when improperly  
1661 treated, stored, transported, disposed of, or otherwise managed.

1662 "Hazardous waste generation" means the act or process of producing hazardous waste.

1663 "Household hazardous waste" means any waste material derived from households (including single and  
1664 multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds,  
1665 and day-use recreation areas) which, except for the fact that it is derived from a household, would be  
1666 classified as a hazardous waste, including nickel, cadmium, mercuric oxide, manganese, zinc-carbon or lead  
1667 batteries; solvent-based paint, paint thinner, paint strippers, or other paint solvents; any product containing  
1668 trichloroethylene, toxic art supplies, used motor oil and unusable gasoline or kerosene, fluorescent or high  
1669 intensity light bulbs, ammunition, fireworks, banned pesticides, or restricted-use pesticides as defined in §  
1670 3.2-3900. All empty household product containers and any household products in legal distribution, storage,  
1671 or use shall not be considered household hazardous waste.

1672 "Key personnel" means the applicant itself and any person employed by the applicant in a managerial  
1673 capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste  
1674 operations of the applicant in Virginia, but does not include employees exclusively engaged in the physical or  
1675 mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such  
1676 other employees as the Director may designate by regulation. If the applicant has not previously conducted  
1677 solid waste or hazardous waste operations in Virginia, "key personnel" also includes any officer, director, or  
1678 partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any  
1679 holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural  
1680 person, "key personnel" includes all key personnel of that entity, provided that where such entity is a  
1681 chartered lending institution or a reporting company under the Federal Securities Exchange Act of 1934, "key  
1682 personnel" does not include key personnel of such entity. Provided further that "key personnel" means the  
1683 chief executive officer of any agency of the United States or of any agency or political subdivision of the  
1684 Commonwealth and all key personnel of any person, other than a natural person, that operates a landfill or  
1685 other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for  
1686 one of those governmental entities.

1687 "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination  
1688 of hazardous waste during its transportation from the point of generation to the point of disposal, treatment,  
1689 or storage of such hazardous waste.

1690 "Mixed radioactive waste" means radioactive waste that contains a substance that renders the mixture a  
1691 hazardous waste.

1692 "Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped,  
1693 or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment  
1694 or present a hazard to human health.

1695 "Person" includes an individual, corporation, partnership, association, governmental body, municipal  
1696 corporation, or any other legal entity.

1697 "Post-use polymer" means a plastic polymer that:

1698 1. Is derived from any industrial, commercial, agricultural, or domestic activity.

1699 2. Is processed at an advanced recycling facility or held at such facility prior to processing.

1700 3. Is used or intended for use as a feedstock to manufacture crude oil, fuels, feedstocks, blendstocks, raw  
1701 materials, or other intermediate products or final products, using advanced recycling.

1702 4. Is not mixed with solid waste or hazardous waste on site or during processing at the advanced recycling  
1703 facility at which it is processed.

1704 5. Has been sorted from solid waste and other regulated waste but may contain residual amounts of (i)  
1705 solid wastes, such as organic material, and (ii) incidental contaminants or impurities, such as paper labels or  
1706 metal rings.

1707 "Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of  
1708 oxygen until melted and thermally decomposed and are then cooled, condensed, and converted to crude oil,  
1709 diesel fuel, gasoline, home heating oil, ethanol, transportation fuel, other fuels, chemicals, waxes, lubricants,

1710 chemical feedstocks, diesel and gasoline blendstocks, or other valuable raw, intermediate, or final products  
 1711 that are returned to economic utility in the form of raw materials, products, or fuels.

1712 "Radioactive waste" or "nuclear waste" includes:

1713 1. "Low-level radioactive waste" material that:

1714 a. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as  
 1715 defined in § 11(e)(2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(e)(2)); and

1716 b. The Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive  
 1717 waste; or

1718 2. "High-level radioactive waste," which means:

1719 a. The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid  
 1720 waste produced directly in reprocessing and any solid material derived from such liquid waste that contains  
 1721 fission products in sufficient concentrations; and

1722 b. Other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing  
 1723 law, determines by rule requires permanent isolation.

1724 "Recovered feedstock" means one or more of the following materials that has been processed so that it  
 1725 can be used as feedstock in an advanced recycling facility:

1726 1. Post-use polymers.

1727 2. Materials for which the U.S. Environmental Protection Agency has made a nonwaste determination  
 1728 under 40 C.F.R. § 241.3(c) or has otherwise determined are feedstocks and not solid waste.

1729 "Recovered feedstock" does not include unprocessed municipal solid waste and is not mixed with solid  
 1730 waste or hazardous waste on site or during processing at an advanced recycling facility.

1731 "Recycling residue" means the (i) nonmetallic substances, including plastic, rubber, and insulation, that  
 1732 remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor  
 1733 vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals,  
 1734 glass, plastics, and paper that are to be recycled as part of a resource recovery process for municipal solid  
 1735 waste resulting in the production of a refuse derived fuel.

1736 "Resource conservation" means reduction of the amounts of solid waste that are generated, reduction of  
 1737 overall resource consumption, and utilization of recovered resources.

1738 "Resource recovery" means the recovery of material or energy from solid waste.

1739 "Resource recovery system" means a solid waste management system that provides for collection,  
 1740 separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

1741 "Sanitary landfill" means a disposal facility for solid waste so located, designed, and operated that it does  
 1742 not pose a substantial present or potential hazard to human health or the environment, including pollution of  
 1743 air, land, surface water, or ground water.

1744 "Sludge" means any solid, semisolid, or liquid wastes with similar characteristics and effects generated  
 1745 from a public, municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant,  
 1746 air pollution control facility, or any other waste-producing facility.

1747 "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid,  
 1748 semisolid, or contained gaseous material, resulting from industrial, commercial, mining, and agricultural  
 1749 operations, or community activities, but does not include (i) solid or dissolved material in domestic sewage;  
 1750 (ii) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to  
 1751 a permit from the ~~State Water Control Board~~ *Department*; (iii) source, special nuclear, or by-product material  
 1752 as defined by the Federal Atomic Energy Act of 1954, as amended; or (iv) post-use polymers or recovered  
 1753 feedstocks that are (a) processed at an advanced recycling facility or (b) held at or held for the purpose of  
 1754 conversion at such advanced recycling facility prior to conversion.

1755 "Solid waste management facility" means a site used for planned treating, long-term storage, or disposing  
 1756 of solid waste. A "solid waste management facility" may consist of several treatment, storage, or disposal  
 1757 units.

1758 "Solvolysis" means a manufacturing process through which post-use polymers are purified with the aid of  
 1759 solvents, allowing additives and contaminants to be removed. The products of solvolysis are polymers  
 1760 capable of being recycled or reused without first being reverted to a monomer. "Solvolysis" includes  
 1761 hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

1762 "Transport" or "transportation" means any movement of property and any packing, loading, or unloading  
 1763 or storage incidental thereto.

1764 "Treatment" means any method, technique, or process, including incineration or neutralization, designed  
 1765 to change the physical, chemical, or biological character or composition of any waste to neutralize it or to  
 1766 render it less hazardous or nonhazardous, safer for transport, amenable to recovery or storage, or reduced in  
 1767 volume.

1768 "Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing  
 1769 activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and  
 1770 tree prunings, bark, limbs, roots, and stumps.

1771 "Waste" means any solid, hazardous, or radioactive waste as defined in this section.

1772 "Waste management" means the collection, source separation, storage, transportation, transfer, processing,  
 1773 treatment, and disposal of waste or resource recovery. "Waste management" does not include pyrolysis,  
 1774 gasification, depolymerization, solvolysis, or any other advanced recycling process if the source materials  
 1775 used in such process are composed of post-use polymers or recovered feedstocks.

1776 "Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves,  
 1777 grass trimmings, brush, wood chips, and shrub and tree trimmings. "Yard waste" does not include roots or  
 1778 stumps that exceed six inches in diameter.

1779 **§ 10.1-1402.2. Virginia Waste Management Permit Program Fund; use of moneys.**

1780 A. There is hereby established a special, nonreverting fund in the state treasury to be known as the  
 1781 Virginia Waste Management Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding  
 1782 the provisions of § 2.2-1802, all moneys collected pursuant to subdivision 16 of § 10.1-1402 shall be paid  
 1783 into the state treasury to the credit of the Fund.

1784 B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund.  
 1785 Interest earned on such moneys shall remain in the Fund and be credited to it.

1786 C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the  
 1787 State Comptroller, for the purposes of recovering portions of the costs of processing applications under  
 1788 subdivision 16 of § 10.1-1402 under the direction of the Director.

1789 D. An accounting of moneys received by and distributed from the Fund shall be kept by the State  
 1790 Comptroller and furnished upon request to the Governor or the General Assembly.

1791 **§ 10.1-1408.5. Special provisions regarding wetlands.**

1792 A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the  
 1793 expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this subsection  
 1794 shall not apply to subsection B or the (i) expansion of an existing municipal solid waste landfill located in the  
 1795 City of Danville or the City of Suffolk when the owner or operator of the landfill is an authority created  
 1796 pursuant to § 15.2-5102 that has applied for a permit under § 404 of the federal Clean Water Act, 33 U.S.C. §  
 1797 1251 *et seq.* prior to January 1, 1989, and the owner or operator has received a permit under § 404 of the  
 1798 federal Clean Water Act and the Virginia Water Resources and Wetlands Protection Program, Article 2.2 (§  
 1799 62.1-44.15:20 *et seq.*) of Chapter 3.1 of Title 62.1, or (ii) construction of a new municipal solid waste landfill  
 1800 in Mecklenburg County and provided that the municipal solid waste landfills covered under clauses (i) and  
 1801 (ii) have complied with all other applicable federal and state environmental laws and regulations. It is  
 1802 expressly understood that while the provisions of this section provide an exemption to the general siting  
 1803 prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the  
 1804 project should receive the necessary environmental and regulatory permits to proceed. For the purposes of  
 1805 this section, the term "expansion of a municipal solid waste landfill" shall include the siting and construction  
 1806 of new cells or the expansion of existing cells at the same location.

1807 B. The Director may issue a solid waste permit for the expansion of a municipal solid waste landfill  
 1808 located in a wetland only if the following conditions are met: (i) the proposed landfill site is at least 100 feet  
 1809 from any surface water body and at least one mile from any tidal wetland; (ii) the Director determines, based  
 1810 upon the existing condition of the wetland system, including, but not limited to, sedimentation, toxicity,  
 1811 acidification, nitrification, vegetation, and proximity to existing permitted waste disposal areas, roads or other  
 1812 structures, that the construction or restoration of a wetland system in another location in accordance with a  
 1813 Virginia Water Protection Permit approved by the ~~State Water Control Department~~ or a general permit  
 1814 issued as a regulation by the Board would provide higher quality wetlands; and (iii) the permit requires a  
 1815 minimum two-to-one wetlands mitigation ratio. This subsection shall not apply to the exemptions provided in  
 1816 clauses (i) and (ii) of subsection A.

1817 C. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing  
 1818 solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a  
 1819 potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is  
 1820 within a mile of such a wetland, unless the Director determines that less frequent monitoring is necessary.  
 1821 This provision shall not limit the authority of the Board or the Director to require that monitoring be  
 1822 conducted more frequently than quarterly. If the landfill is one that accepts only ash, ground water  
 1823 monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the  
 1824 Director. All results shall be reported to the Department.

1825 D. This section shall not apply to landfills which impact less than two acres of nontidal wetlands.

1826 E. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any  
 1827 tidal wetland or surface water body.

1828 F. There shall be no additional exemptions granted from this section unless (i) the proponent has  
 1829 submitted to the Department an assessment of the potential impact to wetlands, the need for the exemption,  
 1830 and the alternatives considered and (ii) the Department has made the information available for public review  
 1831 for at least 60 days prior to the first day of the next Regular Session of the General Assembly.

1832 **§ 10.1-1450. Board to promulgate regulations regarding hazardous materials.**

1833 The Board shall promulgate regulations designating the manner and method by which hazardous materials

1834 shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. Such regulations  
 1835 shall be no more restrictive than any applicable federal laws or regulations.

1836 **§ 10.1-1454.1. Regulation of wastes transported by water.**

1837 A. The Board shall develop regulations governing the commercial transport, loading and off-loading of  
 1838 nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris  
 1839 being transported directly to a processing facility for recycling or reuse, and source-separated recyclables),  
 1840 municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the  
 1841 navigable waters of the Commonwealth as are necessary to protect the health, safety, and welfare of the  
 1842 citizens of the Commonwealth and to protect the Commonwealth's environment and natural resources from  
 1843 pollution, impairment or destruction. Included in the regulations shall be provisions governing (i) the  
 1844 issuance of permits by rule to facilities receiving nonhazardous solid waste (except scrap metal, dredged  
 1845 material, recyclable construction demolition debris being transported directly to a processing facility for  
 1846 recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical  
 1847 waste from a ship, barge or other vessel transporting such wastes upon the navigable waters of the  
 1848 Commonwealth and (ii) to the extent allowable under federal law and regulation, the commercial transport of  
 1849 nonhazardous solid wastes (except scrap metal, dredged material, recyclable construction demolition debris  
 1850 being transported directly to a processing facility for recycling or reuse, and source-separated recyclables),  
 1851 municipal and industrial sludge, and regulated medical waste upon the navigable waters of the  
 1852 Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such waste.

1853 B. 1. Included in the regulations shall be requirements, to the extent allowable under federal law, that: ~~(a)~~  
 1854 (i) containers holding wastes be watertight and be designed, constructed, secured and maintained so as to  
 1855 prevent the escape of wastes, liquids and odors and to prevent the loss or spillage of wastes in the event of an  
 1856 accident; ~~(b)~~ (ii) containers be tested at least two times a year and be accompanied by a certification from the  
 1857 container owner that such testing has shown that the containers are watertight; ~~(c)~~ (iii) each container be  
 1858 listed on a manifest designed to assure that the waste being transported in each container is suitable for the  
 1859 destination facility; and ~~(d)~~ (iv) containers be secured to the barges to prevent accidents during transportation,  
 1860 loading and unloading.

1861 2. For the purposes of this section and the regulations promulgated hereunder, a container shall satisfy  
 1862 clauses ~~(a)~~ (i) and ~~(b)~~ (ii) of subdivision B 1; if it meets the following requirements:

1863 a. Each container shall be certified for special service by a Delegated Approval Authority approved by the  
 1864 U.S. Coast Guard in accordance with 49 CFR Parts 450 through 453 as having met the requirements for the  
 1865 approval of prototype containers described in §§ 1.5 and 1.17.2 of the Rules for Certification of Cargo  
 1866 Containers, 1998, American Bureau of Shipping, including a special container prototype test as follows: a  
 1867 minimum internal head of three inches of water shall be applied to all sides, seams, bottom and top of the  
 1868 container for at least 15 minutes of each side, seam, bottom and top, during which the container shall remain  
 1869 free from the escape of water.

1870 b. Each container shall be certified by the Delegated Approval Authority as having passed the following  
 1871 test when the container is placed in service and at least once every six months thereafter while it remains in  
 1872 service:

1873 (1) Each container shall have a minimum internal head of 24 inches of water applied to the container in an  
 1874 upright position for at least 15 minutes during which the container shall remain free from the escape of water.  
 1875 All wastewater and contaminated water resulting from this test procedure shall be disposed of in compliance  
 1876 with the applicable regulations of the ~~State Water Control~~ Board.

1877 (2) Each container shall be visually inspected for damage on all sides, plus the top and bottom, and shall  
 1878 have no visible holes, gaps, or structural damage affecting its integrity or performance.

1879 c. Following each unloading of solid waste from a container, each container shall be visually inspected, as  
 1880 practical, at the solid waste management facility immediately upon unloading for damage on all sides, plus  
 1881 top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or  
 1882 performance.

1883 3. It shall be a violation of this chapter if during transportation, holding, or storage operations, or in the  
 1884 event of an accident, there is an: (i) entry of liquids into a container; (ii) escape, loss, or spillage of wastes or  
 1885 liquids from a container; or (iii) escape of odors from a container.

1886 C. A facility utilized to receive nonhazardous solid waste (except scrap metal, dredged material,  
 1887 recyclable construction demolition debris being transported directly to a processing facility for recycling or  
 1888 reuse, and source-separated recyclables), municipal and industrial sludge, or regulated medical waste from a  
 1889 ship, barge or other vessel regulated pursuant to subsection A, arriving at the facility upon the navigable  
 1890 waters of the Commonwealth, is a solid waste management facility and is subject to the requirements of this  
 1891 chapter. On and after the effective date of the regulations promulgated under subsection A, no new or existing  
 1892 facilities shall receive any wastes regulated under subsection A from a ship, barge, or other vessel without a  
 1893 permit issued in accordance with the Board's regulations.

1894 D. 1. The Board shall, by regulation, establish a fee schedule, payable by the owner or operator of any

1895 ship, barge, or other vessel carrying, loading, or off-loading waste regulated under this article on the  
 1896 navigable waters of the Commonwealth, for the purpose of funding the administrative and enforcement costs  
 1897 of this article associated with such operations including, but not limited to, the inspection and monitoring of  
 1898 such ships, barges, or other vessels to ensure compliance with this article, and for funding activities  
 1899 authorized by this section to abate pollution caused by barging of waste, to improve water quality, or for  
 1900 other waste-related purposes.

1901 2. The owner or operator of a facility permitted to receive wastes regulated under this article from a ship,  
 1902 barge or other vessel shall be assessed a permit fee in accordance with the criteria set forth in § 10.1-1402.1.  
 1903 However, such fees shall also include an additional amount to cover the Department's costs for facility  
 1904 inspections that it shall conduct on at least a quarterly basis.

1905 3. The fees collected pursuant to this article shall be deposited into a separate account within the Virginia  
 1906 Waste Management Board Permit Program Fund (§ 10.1-1402.2) and shall be treated as are other moneys in  
 1907 that fund except that they shall only be used for the purposes of this article, and for funding purposes  
 1908 authorized by this article to abate pollution caused by barging of waste, to improve water quality, or for other  
 1909 waste-related purposes.

1910 E. The Board shall promulgate regulations requiring owners and operators of ships, barges and other  
 1911 vessels transporting wastes regulated under this article to demonstrate financial responsibility sufficient to  
 1912 comply with the requirements of this article as a condition of operation. Regulations governing the amount of  
 1913 any financial responsibility required shall take into consideration: (i) the risk of potential damage or injury to  
 1914 state waters and the impairment of beneficial uses that may result from spillage or leakage from the ship,  
 1915 barge or vessel; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or  
 1916 interference with general health, welfare and property that may result.

1917 F. The owner or operator of a ship, barge or other vessel from which there is spillage or loss to state  
 1918 waters of wastes subject to regulations under this article shall immediately report such spillage or loss in  
 1919 accordance with the regulations of the Board and shall immediately take all such actions as may be necessary  
 1920 to contain and remove such wastes from state waters.

1921 G. No person shall transport wastes regulated under this article on the navigable waters of the  
 1922 Commonwealth by ship, barge or other vessel unless such ship, barge or vessel and the containers carried  
 1923 thereon are designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids,  
 1924 waste and odors and to prevent the loss or spillage of waste in the event of an accident. A violation of this  
 1925 subsection ~~shall be~~ is a Class 1 misdemeanor. For the purposes of this subsection, the term "odors" means any  
 1926 emissions that cause an odor objectionable to individuals of ordinary sensibility.

1927 H. The Director may grant variances for the commercial transport, loading, and off-loading of solid waste  
 1928 on waters of the Commonwealth from the requirements of this section provided: ~~that~~ (i) travel on state waters  
 1929 is minimized; (ii) the solid waste is easily identifiable, is not hazardous, and is containerized so as to prevent  
 1930 the escape of liquids, waste, and odors; (iii) the containers are secured to the vessel to prevent spillage; (iv)  
 1931 the amount of solid waste transported does not exceed 300 tons annually; and (v) the activity will not occur  
 1932 when weather conditions pose a risk of the vessel losing its load.

1933 **§ 10.1-1504. Department to enforce Compact; civil penalty.**

1934 The ~~Virginia Waste Management Board~~ *Department* is authorized to enforce the provisions of this  
 1935 chapter. Any person not an official of another party state to the Compact who violates any provision of this  
 1936 chapter shall be subject to a civil penalty of not more than \$25,000 per day for each violation.

1937 **§ 10.1-2117. Definitions.**

1938 As used in this chapter, unless the context requires a different meaning:

1939 "Biological nutrient removal technology" means technology that will typically achieve at least an 8 mg/L  
 1940 total nitrogen concentration or at least a 1 mg/L total phosphorus concentration in effluent discharges.

1941 "Chesapeake Bay Agreement" means the Chesapeake Bay Agreement of 2000 and any amendments  
 1942 thereto.

1943 "Eligible nonsignificant discharger" means any publicly owned treatment works that is not a significant  
 1944 discharger but due to expansion or new construction is subject to a technology-based standard under § 62.1-  
 1945 44.19:15 or 62.1-44.19:16.

1946 "Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§ 10.1-2128 et  
 1947 seq.).

1948 "Individual" means any corporation, foundation, association, or partnership or one or more natural  
 1949 persons.

1950 "Institutions of higher education" means any educational institution meeting the requirements of § 60.2-  
 1951 220.

1952 "Local government" means any county, city, town, municipal corporation, authority, district, commission,  
 1953 or political subdivision of the Commonwealth.

1954 "Nonpoint source pollution" means pollution of state waters washed from the land surface in a diffuse  
 1955 manner and not resulting from a discernible, defined, or discrete conveyance.

1956 "Nutrient removal technology" means state-of-the-art nutrient removal technology, biological nutrient



- 1957 removal technology, or other nutrient removal technology.
- 1958 "Point source pollution" means pollution of state waters resulting from any discernible, defined, or
- 1959 discrete conveyances.
- 1960 "Publicly owned treatment works" means a publicly owned sewage collection system consisting of
- 1961 pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances
- 1962 appurtenant thereto, or any equipment, plant, treatment works, structure, machinery, apparatus, interest in
- 1963 land, or any combination of these, not including an onsite sewage system, that is used, operated, acquired, or
- 1964 constructed for the storage, collection, treatment, neutralization, stabilization, reduction, recycling,
- 1965 reclamation, separation, or disposal of wastewater, or for the final disposal of residues resulting from the
- 1966 treatment of sewage, including but not limited to: treatment or disposal plants; outfall sewers, interceptor
- 1967 sewers, and collector sewers; pumping and ventilating stations, facilities, and works; and other real or
- 1968 personal property and appurtenances incident to their development, use, or operation.
- 1969 "Reasonable sewer costs" means the amount expended per household for sewer service in relation to the
- 1970 median household income of the service area as determined by guidelines developed and approved by the
- 1971 ~~State Water Control~~ Board of *Environmental Resources* for use with the Virginia Water Facilities Revolving
- 1972 Fund established pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1.
- 1973 "Significant discharger" means (i) a publicly owned treatment works discharging to the Chesapeake Bay
- 1974 watershed with a design capacity of 0.5 million gallons per day or greater, (ii) a publicly owned treatment
- 1975 works discharging to the Chesapeake Bay watershed east of the fall line with a design capacity of 0.1 million
- 1976 gallons per day or greater, (iii) a planned or newly expanding publicly owned treatment works discharging to
- 1977 the Chesapeake Bay watershed, ~~which~~ *that* is expected to be in operation by 2010 with a permitted design of
- 1978 0.5 million gallons per day or greater, or (iv) a planned or newly expanding publicly owned treatment works
- 1979 discharging to the Chesapeake Bay watershed east of the fall line with a design capacity of 0.1 million
- 1980 gallons per day or greater, ~~which~~ *that* is expected to be in operation by 2010.
- 1981 "State-of-the-art nutrient removal technology" means technology that will achieve at least a 3 mg/L total
- 1982 nitrogen concentration or at least a 0.3 mg/L total phosphorus concentration in effluent discharges.
- 1983 "State waters" means all waters on the surface or under the ground, wholly or partially within or bordering
- 1984 the Commonwealth or within its jurisdictions.
- 1985 "Water Quality Improvement Grants" means grants available from the Fund for projects of local
- 1986 governments, institutions of higher education, and individuals (i) to achieve nutrient reduction goals in
- 1987 regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan or (ii) to achieve other
- 1988 water quality restoration, protection or enhancement benefits.
- 1989 **§ 10.1-2123. Definitions.**
- 1990 As used in this article, unless the context requires a different meaning:
- 1991 "Board" means the ~~State Water Control~~ Board of *Environmental Resources*.
- 1992 "Department" means the Department of Environmental Quality.
- 1993 "Director" means the Director of the Department of Environmental Quality.
- 1994 **§ 10.1-2129. Agency coordination; conditions of grants.**
- 1995 A. If, in any fiscal year beginning on or after July 1, 2005, there are appropriations to the Fund in addition
- 1996 to those made pursuant to subsection A of § 10.1-2128, the Secretary of Natural and Historic Resources shall
- 1997 distribute those moneys in the Fund provided from the 10 percent of the annual general fund revenue
- 1998 collections that are in excess of the official estimates in the general appropriation act, and the 10 percent of
- 1999 any unrestricted and uncommitted general fund balance at the close of each fiscal year whose reappropriation
- 2000 is not required in the general appropriation act, as follows:
- 2001 1. Seventy percent of the moneys shall be distributed to the Department of Conservation and Recreation
- 2002 and shall be administered by it for the sole purpose of implementing projects or best management practices
- 2003 that reduce nitrogen and phosphorus nonpoint source pollution, with a priority given to agricultural best
- 2004 management practices. In no single year shall more than 60 percent of the moneys be used for projects or
- 2005 practices exclusively within the Chesapeake Bay watershed; and
- 2006 2. Thirty percent of the moneys shall be distributed to the Department of Environmental Quality, which
- 2007 shall use such moneys for making grants for the sole purpose of designing and installing nutrient removal
- 2008 technologies for publicly owned treatment works designated as significant dischargers or eligible
- 2009 nonsignificant dischargers. The moneys shall also be available for grants when the design and installation of
- 2010 nutrient removal technology utilizes the Public-Private Education Facilities and Infrastructure Act (§ 56-
- 2011 575.1 et seq.).
- 2012 3. Except as otherwise provided in the Appropriation Act, in any fiscal year when moneys are not
- 2013 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128, or when moneys
- 2014 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128 are less than 40 percent
- 2015 of those specified in subsection A of § 10.1-2128, the Secretary of Natural and Historic Resources, in
- 2016 consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of
- 2017 Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and

2018 Conservation and Recreation, and with the advice and guidance of the Board of Conservation and Recreation,  
2019 the Virginia Soil and Water Conservation Board, and the ~~State Water Control~~ Board of *Environmental*  
2020 *Resources*, and following a public comment period of at least 30 days and a public hearing, shall allocate  
2021 those moneys deposited in the Fund, but excluding any moneys deposited into the Virginia Natural Resources  
2022 Commitment Fund established pursuant to § 10.1-2128.1, between point and nonpoint sources, both of which  
2023 shall receive moneys in each such year.

2024 B. 1. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural and  
2025 Historic Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the  
2026 Commissioner of Agriculture and Consumer Services, the State Health Commissioner, and the Directors of  
2027 the Departments of Environmental Quality and Conservation and Recreation, and with the advice and  
2028 guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board, and  
2029 the ~~State Water Control~~ Board of *Environmental Resources*, shall develop written guidelines that (i) specify  
2030 eligibility requirements; (ii) govern the application for and the distribution and conditions of Water Quality  
2031 Improvement Grants; (iii) list criteria for prioritizing funding requests; and (iv) define criteria and financial  
2032 incentives for water reuse.

2033 2. In developing the guidelines, the Secretary shall evaluate and consider, in addition to such other factors  
2034 as may be appropriate to most effectively restore, protect and improve the quality of state waters: (i) specific  
2035 practices and programs proposed in the Chesapeake Bay TMDL Watershed Implementation Plan, and the  
2036 associated effectiveness and cost per pound of nutrients removed; (ii) water quality impairment or  
2037 degradation caused by different types of nutrients released in different locations from different sources; and  
2038 (iii) environmental benchmarks and indicators for achieving improved water quality. The process for  
2039 development of guidelines pursuant to this subsection shall, at a minimum, include (a) use of an advisory  
2040 committee composed of interested parties; (b) a 60-day public comment period on draft guidelines; (c)  
2041 written responses to all comments received; and (d) notice of the availability of draft guidelines and final  
2042 guidelines to all who request such notice.

2043 3. In addition to those the Secretary deems advisable to most effectively restore, protect and improve the  
2044 quality of state waters, the criteria for prioritizing funding requests shall include: (i) the pounds of total  
2045 nitrogen and the pounds of total phosphorus reduced by the project; (ii) whether the location of the water  
2046 quality restoration, protection or improvement project or program is within a watershed or subwatershed with  
2047 documented water nutrient loading problems or adopted nutrient reduction goals; (iii) documented water  
2048 quality impairment; and (iv) the availability of other funding mechanisms. Notwithstanding the provisions of  
2049 subsection E of § 10.1-2131, the Director of the Department of Environmental Quality may approve a local  
2050 government point source grant application request for any single project that exceeds the authorized grant  
2051 amount outlined in subsection E of § 10.1-2131. Whenever a local government applies for a grant that  
2052 exceeds the authorized grant amount outlined in this chapter or when there is no stated limitation on the  
2053 amount of the grant for which an application is made, the Directors and the Secretary shall consider the  
2054 comparative revenue capacity, revenue efforts and fiscal stress as reported by the Commission on Local  
2055 Government. The development or implementation of cooperative programs developed pursuant to subsection  
2056 B of § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement  
2057 Grants from the moneys allocated to nonpoint source pollution.

2058 **§ 10.1-2131. Point source pollution funding; conditions for approval.**

2059 A. The Department of Environmental Quality (the Department) shall be the lead state agency for  
2060 determining the appropriateness of any grant related to point source pollution to be made from the Fund to  
2061 restore, protect, or improve state water quality.

2062 B. The Director of the Department (the Director) shall, subject to available funds and in coordination with  
2063 the Director of the Department of Conservation and Recreation, direct the State Treasurer to make Water  
2064 Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The  
2065 Director shall enter into grant agreements with all facilities designated as significant dischargers or eligible  
2066 nonsignificant dischargers that apply for grants; however, all such grant agreements shall contain provisions  
2067 that payments thereunder are subject to the availability of funds.

2068 C. Notwithstanding the priority provisions of § 10.1-2129, the Director shall not authorize the distribution  
2069 of grants from the Fund for purposes other than financing the cost of design and installation of nutrient  
2070 removal technology at publicly owned treatment works in the Chesapeake Bay watershed until such time as  
2071 nutrient reductions of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan  
2072 are satisfied, unless he finds that there exists in the Fund sufficient funds for substantial and continuing  
2073 progress in implementation of the reductions established in accordance with regulations, permits, or the  
2074 Chesapeake Bay TMDL Watershed Implementation Plan within the Chesapeake Bay watershed.

2075 In addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include: (i)  
2076 numerical technology-based effluent concentration limitations on nutrient discharges to state waters based  
2077 upon the technology installed by the facility; (ii) enforceable provisions related to the maintenance of the  
2078 numerical concentrations that will allow for exceedances of 0.8 mg/L for total nitrogen or no more than 10

2079 percent, whichever is greater, for exceedances of 0.1 mg/L for total phosphorus or no more than 10%, and for  
 2080 exceedances caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth  
 2081 to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to  
 2082 fund their share of the cost of designing and installing nutrient removal technology based on financial need  
 2083 and subject to availability of revolving loan funds, priority ranking, and revolving loan distribution criteria.

2084 If, pursuant to § 10.1-1187.6, the ~~State Water Control~~ Board of *Environmental Resources* approves an  
 2085 alternative compliance method to technology-based concentration limitations in Virginia Pollutant Discharge  
 2086 Elimination System permits, the concentration limitations of the grant agreement shall be suspended subject  
 2087 to the terms of such approval. The cost of the design and installation of nutrient removal technology at  
 2088 publicly owned treatment works meeting the nutrient reductions of regulations, permits, or the Chesapeake  
 2089 Bay TMDL Watershed Implementation Plan and incurred prior to the execution of a grant agreement is  
 2090 eligible for reimbursement from the Fund if the grant is made pursuant to an executed agreement consistent  
 2091 with the provisions of this chapter.

2092 Subsequent to the implementation of any applicable regulations, permits, or the Chesapeake Bay TMDL  
 2093 Watershed Implementation Plan, the Director may authorize disbursements from the Fund for any water  
 2094 quality restoration, protection, and improvements related to point source pollution that are clearly  
 2095 demonstrated as likely to achieve measurable and specific water quality improvements, including cost  
 2096 effective technologies to reduce loads of total phosphorus, total nitrogen, or nitrogen-containing ammonia in  
 2097 order to meet the requirements of regulations associated with the reduction of ammonia that have not yet been  
 2098 adopted and that are more stringent than regulations adopted by the ~~State Water Control~~ Board of  
 2099 *Environmental Resources* as of January 1, 2018. Notwithstanding any provision of this subsection, the  
 2100 Director may, at any time, authorize grants, including grants to institutions of higher education, for technical  
 2101 assistance related to nutrient reduction.

2102 Notwithstanding any other provision of this chapter, the Director may at any time authorize grants for the  
 2103 design and installation of wastewater conveyance infrastructure that (a) diverts wastewater from one publicly  
 2104 owned treatment works that is eligible for grant funding under this chapter to another publicly owned  
 2105 treatment works that also is eligible for such funding; (b) diverts wastewater to a receiving treatment works  
 2106 that is capable of achieving compliance with its nutrient reduction or ammonia control discharge  
 2107 requirements and results in a net reduction in total phosphorus, total nitrogen, or nitrogen-containing  
 2108 ammonia discharges; and (c) results in a Water Quality Improvement Grant expense being incurred by the  
 2109 Department that is the same as or lower than the grant expense the Department would incur in funding design  
 2110 and installation of eligible nutrient removal or other applicable treatment technology at such treatment works  
 2111 that would have treated the wastewater in the absence of the diversion project.

2112 D. The grant percentage provided for financing the costs of the design and installation of nutrient removal  
 2113 technology at publicly owned treatment works shall be based upon the financial need of the community as  
 2114 determined by comparing the annual sewer charges expended within the service area to the reasonable sewer  
 2115 cost established for the community.

2116 E. Grants shall be awarded in the following manner:

2117 1. In communities for which the ratio of annual sewer charges to reasonable sewer cost is less than 0.30,  
 2118 the Director shall authorize grants in the amount of 35 percent of the costs of the design and installation of  
 2119 nutrient removal technology;

2120 2. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or  
 2121 greater than 0.30 and less than 0.50, the Director shall authorize grants in the amount of 45 percent of the  
 2122 costs of the design and installation of nutrient removal technology;

2123 3. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or  
 2124 greater than 0.50 and less than 0.80, the Director shall authorize grants in the amount of 60 percent of the  
 2125 costs of design and installation of nutrient removal technology; and

2126 4. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or  
 2127 greater than 0.80, the Director shall authorize grants in the amount of 75 percent of the costs of the design  
 2128 and installation of nutrient removal technology.

2129 **§ 10.1-2500. Virginia Environmental Emergency Response Fund.**

2130 A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter referred  
 2131 to as the Fund, to be used (i) for the purpose of emergency response to environmental pollution incidents and  
 2132 for the development and implementation of corrective actions for pollution incidents, other than pollution  
 2133 incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as described in § 62.1-  
 2134 44.34:11 of the State Water Control Law; (ii) to conduct assessments of potential sources of toxic  
 2135 contamination in accordance with the policy developed pursuant to § 62.1-44.19:10; and (iii) to assist small  
 2136 businesses for the purposes described in § 10.1-1197.3.

2137 B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such  
 2138 moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

2139 1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to

2140 subsection B of § 10.1-1316, and civil charges assessed pursuant to subsection C of § 10.1-1316.

2141 2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed pursuant to  
2142 subsections A and E of § 10.1-1455, and civil charges assessed pursuant to subsection F of § 10.1-1455.

2143 3. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Civil  
2144 charges assessed pursuant to subdivision (8d) of § 62.1-44.15 and civil penalties assessed pursuant to  
2145 subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 9 (§ 62.1-44.34:8 et seq.)  
2146 or 10 (§ 62.1-44.34:10 et seq.); ~~Chapter 3-1 of Title 62-1, of the State Water Control Law~~ or a regulation,  
2147 administrative or judicial order, or term or condition of approval relating to or issued under those articles.

2148 3. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Civil  
2149 charges assessed pursuant to subdivision (8d) of § 62.1-44.15 and civil penalties assessed pursuant to  
2150 subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 2.3 (§ 62.1-44.15:24 et  
2151 seq.), 2.4 (§ 62.1-44.15:51 et seq.), 2.5 (§ 62.1-44.15:67 et seq.), 9 (§ 62.1-44.34:8 et seq.), or 10 (§ 62.1-  
2152 44.34:10 et seq.) of ~~Chapter 3-1 of Title 62-1, the State Water Control Law~~ or a regulation, administrative or  
2153 judicial order, or term or condition of approval relating to or issued under those articles.

2154 4. Civil penalties and civil charges assessed pursuant to § 62.1-270.

2155 5. Civil penalties assessed pursuant to subsection A of § 62.1-252 and civil charges assessed pursuant to  
2156 subsection B of § 62.1-252.

2157 6. Civil penalties assessed in conjunction with special orders by the Director pursuant to § 10.1-1186 and  
2158 by the ~~Waste Management Board~~ *Department of Environmental Resources* pursuant to subsection G of § 10.1-1455.

2159 **§ 15.2-924. Water supply emergency ordinances.**

2160 A. Whenever the governing body of any locality finds that a water supply emergency exists or is  
2161 reasonably likely to occur if water conservation measures are not taken, it may adopt an ordinance restricting  
2162 the use of water by the citizens of such locality for the duration of such emergency or for a period of time  
2163 necessary to prevent the occurrence of a water supply emergency. However, such ordinance shall apply only  
2164 to water supplied by a locality, authority, or company distributing water for a fee or charge. Such ordinance  
2165 may include appropriate penalties designed to prevent excessive use of water, including, but not limited to, a  
2166 surcharge on excessive amounts used.

2167 B. After such an emergency has been declared in any locality, any owner of a water supply system serving  
2168 that locality may apply to the ~~State Water Control Board~~ *Department of Environmental Quality* for  
2169 assistance. If the ~~State Water Control Board~~ *Department of Environmental Quality* confirms the existence of  
2170 an emergency, and finds that such owner and such locality have exhausted available means to relieve the  
2171 emergency and that the owner and locality are applying all feasible water conservation measures, and in  
2172 addition finds that there is water available in neighboring localities in excess of the reasonable needs of such  
2173 localities, and that there exists between such neighboring localities interconnections for the transmission of  
2174 water, the ~~Board~~ *Department of Environmental Quality* shall so inform the Governor. The Governor, if  
2175 requested jointly by the locality and the owner of the systems supplying the locality, may then appoint a  
2176 committee consisting of one representative of the locality declaring the emergency, one representative of the  
2177 system supplying the locality under emergency, and those two representatives shall choose a third  
2178 representative and failing to choose such third representative within seven days he shall be selected by the  
2179 Governor. The committee shall have the duty and authority to allocate the water available in such localities  
2180 for the period of the emergency, provided that the period of the emergency shall not exceed that determined  
2181 by the locality declaring the emergency or the ~~State Water Control Board~~ *Department of Environmental*  
2182 *Quality*, whichever period termination is earlier, so that the best water supply possible will be provided to all  
2183 water users during the emergency as previously described. Nothing in this section shall be construed as  
2184 requiring the construction of pipeline interconnections between any locality or any water supply system.

2185 C. Any water taken from one water supplier for the benefit of another shall be paid for by using the  
2186 established rate schedule of the supplier for treated water. Raw water shall be furnished at rates which shall  
2187 reflect all costs to the supplying locality, including, but not limited to, capital investment costs. Should there  
2188 be imposed upon the supplier any additional obligation, water production costs or other capital or operating  
2189 expenditures beyond those normal to the suppliers' system, then the cost of same shall be chargeable to the  
2190 receiving locality by single payment or by incorporation in a special rate structure, all of the same as shall be  
2191 reasonable.

2192 D. Nothing contained in this section shall authorize any locality to regulate the use of water taken from a  
2193 river or any flowing stream when such water is used for industrial purposes and the approximate same  
2194 quantity of water is returned to such river or stream after such industrial usage.

2195 **§ 15.2-2111. Regulation of sewage disposal or water service.**

2196 Any locality may exercise its powers to regulate sewage collection, treatment or disposal service and  
2197 water service notwithstanding any anticompetitive effect. Such regulation may include the establishment of  
2198 an exclusive service area for any sewage or water system, including a system owned or operated by the  
2199 locality, the fixing of rates or charges for any sewage or water service, and the prohibition, restriction or  
2200 regulation of competition between entities providing sewage or water service.

2201 No power herein granted shall alter or amend the powers or the duties of any present or future authority

2202 created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) nor confer any right  
 2203 or responsibility upon the governing body of any locality which would supersede or be inconsistent with any  
 2204 of the duties or responsibilities of the ~~State Water Control~~ Board of *Environmental Resources* or the  
 2205 *Department of Environmental Quality*.

2206 **§ 21-122.1. Bonds for special purpose; no election required.**

2207 The governing body of any county in which a sanitary district has been or may be created by general or  
 2208 special law shall have the power to issue bonds to satisfy improvements to water or sewerage systems  
 2209 mandated by the ~~State Water Control~~ Board of *Environmental Resources* or the *Department of Environmental*  
 2210 *Quality*, pursuant to the Federal ~~Water Pollution Control~~ *Clean Water Act*, as amended (~~P.L. 92-500~~) (*33*  
 2211 *U.S.C. § 1251 et seq.*).

2212 The principal and interest on bonds issued under this section shall be paid by the governing body  
 2213 exclusively from revenues and receipts from the water or sewerage system which is to be improved.

2214 For the purposes of this section, the term "mandated" shall also mean any agreement between a governing  
 2215 body and the ~~State Water Control~~ *Department of Environmental Quality* or the *Board of Environmental*  
 2216 *Resources* to come into compliance with the requirements of the State Water Control Law (§ 62.1-44.2 *et*  
 2217 *seq.*).

2218 Issuance of such bonds shall be subject to the conditions or limitations of this article; however, no bond  
 2219 referendum shall be required for bonds to be issued pursuant to this section. The sections of this article  
 2220 pertaining to election requirements and procedures shall not be applicable where bonds are to be issued for  
 2221 the purposes set forth herein. In addition, the provisions of §§ 21-137.2 and 21-138, authorizing an annual tax  
 2222 to be levied upon all the property in the district in order to pay the principal and interest due on the bonds,  
 2223 shall not be applicable to bonds issued under this section.

2224 All bonds issued under the provisions of this section shall contain a statement on their face substantially to  
 2225 the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any county, city,  
 2226 town, or other subdivision of the Commonwealth are pledged to the payment of the principal of or the interest  
 2227 on such bonds. The issuance of revenue bonds under the provisions of this section shall not directly or  
 2228 indirectly or contingently obligate the Commonwealth or any county, city, town or other subdivision of the  
 2229 Commonwealth to levy any taxes whatever therefor or to make any appropriation for their payment except  
 2230 from the funds pledged under the provisions of this section.

2231 **§ 28.2-638. Authority of Governor to authorize dredging of channel in navigable waters.**

2232 When the approval, consent, or authorization of the Commonwealth is necessary or expedient for any  
 2233 person to dredge a channel of any navigable stream, the bed of which is owned by the Commonwealth, for  
 2234 the purpose of deepening, widening, or relocating such channel and making related improvements, the  
 2235 Governor may, on behalf of the Commonwealth, grant such approval upon such terms and conditions as he  
 2236 deems appropriate after the receipt of advisory reports from the Virginia Institute of Marine Science, the ~~State~~  
 2237 ~~Water Control Board~~ *Department of Environmental Quality*, the Commission, the Board of Wildlife  
 2238 Resources, the Director of the Department of Conservation and Recreation, the Director of the Department of  
 2239 Historic Resources, the State Port Authority, and the Commonwealth Transportation Board.

2240 **§ 28.2-1100. Virginia Institute of Marine Science; duties.**

2241 The Virginia Institute of Marine Science shall hereafter be referred to as (the Institute: ~~The Institute~~) shall:

- 2242 1. Conduct studies and investigations of the seafood and commercial fishing and sport fishing industries;
- 2243 2. Consider ways to conserve, develop, and replenish fisheries resources and advise the Marine Resources  
 2244 Commission and other agencies and private groups on these matters;
- 2245 3. Conduct studies of problems pertaining to the other segments of the maritime economy;
- 2246 4. Conduct studies of marine pollution in cooperation with the ~~State Water Control Board~~ *Department of*  
 2247 *Environmental Quality* and the Department of Health and make the data and their recommendations available  
 2248 to the appropriate agencies;
- 2249 5. Conduct hydrographic and biological studies of the Chesapeake Bay, its tributaries, and all the tidal  
 2250 waters of the Commonwealth and the contiguous waters of the Atlantic Ocean;
- 2251 6. Engage in research in the marine sciences;
- 2252 7. Conduct such special studies and investigations concerning these subjects as requested by the  
 2253 Governor;

2254 8. Engage in research and provide training, technical assistance, and advice to the Board of Conservation  
 2255 and Recreation on erosion along tidal shorelines, the Soil and Water Conservation Board on matters relating  
 2256 to tidal shoreline erosion, and to other agencies upon request; and

2257 9. Develop comprehensive coastal resource management guidance for local governments to foster the  
 2258 sustainability of shoreline resources by December 30, 2012. The guidance shall identify preferred options for  
 2259 shoreline management and taking into consideration the resource condition, priority planning, and forecasting  
 2260 of the condition of the Commonwealth's shoreline with respect to projected sea-level rise.

2261 These studies shall include consideration of the seafood and other marine resources, such as the waters,  
 2262 bottoms, shorelines, tidal wetlands, and beaches, and all matters related to marine waters and the means by

2263 which marine resources might be conserved, developed, and replenished.

2264 **§ 28.2-1205. Permits for the use of state-owned bottomlands.**

2265 A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the  
2266 Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution  
2267 of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of  
2268 the proposed project and shall exercise its authority under this section consistent with the public trust doctrine  
2269 as defined by the common law of the Commonwealth adopted pursuant to § 1-200 in order to protect and  
2270 safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in  
2271 trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of  
2272 Virginia. The Commission shall also consider the project's effect on the following:

- 2273 1. Other reasonable and permissible uses of state waters and state-owned bottomlands;
- 2274 2. Marine and fisheries resources of the Commonwealth;
- 2275 3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this  
2276 title (*§ 28.2-1300 et seq.*);
- 2277 4. Adjacent or nearby properties;
- 2278 5. Water quality; and
- 2279 6. Submerged aquatic vegetation (SAV).

2280 B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine  
2281 Science, the ~~State Water Control Board~~ *Department of Environmental Quality*, the Virginia Department of  
2282 Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit  
2283 application relates to or affects the particular concerns or activities of those agencies.

2284 C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other  
2285 applicant presents to the Commission a plan for sewage treatment or disposal facilities that has been  
2286 approved by the State Department of Health.

2287 D. A permit is required and shall be issued by the Commission for placement of any private pier  
2288 measuring 100 or more feet in length from the mean low-water mark, which is used for noncommercial  
2289 purposes by an owner of the riparian land in the waters opposite the land, and that traverses commercially  
2290 productive leased oyster or clam grounds, as defined in § 28.2-630, provided that the pier does not extend  
2291 beyond the navigation line established by the Commission or the ~~United States~~ *U.S. Army Corps of*  
2292 *Engineers*. The permit may reasonably prescribe the design and location of the pier for the sole purpose of  
2293 minimizing the adverse impact on such oyster or clam grounds or the harvesting or propagation of oysters or  
2294 clams therefrom. The permit shall contain no other conditions or requirements. Unless information or  
2295 circumstances materially alter the conditions under which the permit would be issued, the Commission shall  
2296 act within 90 days of receipt of a complete joint permit application to approve or deny the application. If the  
2297 Commission fails to act within that time, the application shall be deemed approved and the applicant shall be  
2298 notified of the deemed approval.

2299 E. All permits issued by the Commission for the use of state-owned bottomlands pursuant to § 28.2-1204,  
2300 or to recover underwater historic property shall be in writing and specify the conditions and terms that the  
2301 Commission determines are appropriate, and royalties unless prohibited under other provisions of this  
2302 chapter.

2303 F. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review  
2304 in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). However, any  
2305 decision made by the Commission hereunder consistent with the public trust doctrine as defined by the  
2306 common law of the Commonwealth adopted pursuant to § 1-200 shall not be deemed to have been made  
2307 pursuant to the police power. No person shall reapply for the same or substantially similar use of the  
2308 bottomlands within 12 months of the denial of a permit by the Commission. Nothing in this subsection shall  
2309 be construed to deprive a riparian landowner of such rights as he may have under common law.

2310 **§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance.**

2311 Any county, city, or town may adopt the following ordinance, which, after January 1, 2024, shall serve as  
2312 the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county,  
2313 city, or town that has adopted the ordinance prior to January 1, 2024, shall amend the ordinance to conform it  
2314 to the ordinance contained herein by January 1, 2024.

2315 **Wetlands Zoning Ordinance**

2316 § 1. The governing body of \_\_\_\_\_, acting pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of  
2317 the Code of Virginia, adopts this ordinance regulating the use and development of wetlands.

2318 § 2. As used in this ordinance, unless the context requires a different meaning:

2319 "Back Bay and its tributaries" means the following, as shown on the United States Geological Survey  
2320 Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North  
2321 Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek;  
2322 Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars  
2323 Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds, and

- 2324 natural waterways adjacent to or connecting with the above-named bodies of water.
- 2325 "Commission" means the Virginia Marine Resources Commission.
- 2326 "Commissioner" means the Commissioner of Marine Resources.
- 2327 "Governmental activity" means any of the services provided by this \_\_\_\_\_ (county, city, or town) to
- 2328 its citizens for the purpose of maintaining this \_\_\_\_\_ (county, city, or town), including but not limited to
- 2329 such services as constructing, repairing, and maintaining roads; providing sewage facilities and street lights;
- 2330 supplying and treating water; and constructing public buildings.
- 2331 "Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between
- 2332 mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and
- 2333 the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or
- 2334 tropical storm tides.
- 2335 "North Landing River and its tributaries" means the following, as shown on the United States Geological
- 2336 Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the
- 2337 Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and
- 2338 Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all
- 2339 named and unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake
- 2340 and Albemarle Canal except West Neck Creek north of Indian River Road, Pocatoy River west of Blackwater
- 2341 Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point
- 2342 where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west
- 2343 of Blackwater Road.
- 2344 "Person" means any individual, corporation, partnership, association, company, business, trust, joint
- 2345 venture, or other legal entity.
- 2346 "Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation
- 2347 above mean low water equal to the factor one and one-half times the mean tide range at the site of the
- 2348 proposed project in the county, city, or town in question, and upon which is growing any of the following
- 2349 species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis*
- 2350 *spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.),
- 2351 marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye
- 2352 (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass
- 2353 (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus*
- 2354 *validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*),
- 2355 cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress
- 2356 (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow
- 2357 pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus
- 2358 (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.),
- 2359 sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or
- 2360 switch grass (*Panicum virgatum*).
- 2361 "Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River
- 2362 and its tributaries" means all marshes subject to flooding by normal and wind tides but not hurricane or
- 2363 tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina*
- 2364 *alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva*
- 2365 *frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra*
- 2366 *virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia*
- 2367 *oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha*
- 2368 spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar*
- 2369 sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.),
- 2370 arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or
- 2371 switch grass (*Panicum virgatum*).
- 2372 "Wetlands" means both vegetated and nonvegetated wetlands.
- 2373 "Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of Virginia.
- 2374 § 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:
- 2375 1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences,
- 2376 duckblinds, wildlife management shelters, footbridges, observation decks, and shelters and other similar
- 2377 structures, provided that such structures are so constructed on pilings as to permit the reasonably
- 2378 unobstructed flow of the tide and preserve the natural contour of the wetlands;
- 2379 2. The cultivation and harvesting of shellfish, and worms for bait;
- 2380 3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing,
- 2381 shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves,
- 2382 provided that no structure shall be constructed except as permitted in subdivision 1 of this section;
- 2383 4. Other outdoor recreational activities, provided they do not impair the natural functions or alter the
- 2384 natural contour of the wetlands;
- 2385 5. Grazing, haying, and cultivating and harvesting agricultural, forestry, or horticultural products;

2386 6. Conservation, repletion, and research activities of the Commission, the Virginia Institute of Marine  
2387 Science, the Department of Wildlife Resources and other conservation-related agencies;

2388 7. The construction or maintenance of aids to navigation that are authorized by governmental authority;

2389 8. Emergency measures decreed by any duly appointed health officer of a governmental subdivision  
2390 acting to protect the public health;

2391 9. The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds,  
2392 or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands  
2393 are covered;

2394 10. Governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision  
2395 thereof;

2396 11. The normal maintenance of man-made drainage ditches, provided that no additional wetlands are  
2397 covered. This subdivision does not authorize the construction of any drainage ditch; and

2398 12. The construction of living shoreline projects authorized pursuant to a general permit developed under  
2399 subsection B of § 28.2-104.1.

2400 § 4. A. Any person who desires to use or develop any wetland within this \_\_\_\_\_ (county, city, or  
2401 town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first file  
2402 an application for a permit directly with the wetlands board or with the Commission.

2403 B. The permit application shall include the following: the name and address of the applicant; a detailed  
2404 description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of  
2405 wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill  
2406 and excavation, the location, width, depth, and length of any proposed channel and disposal area, and the  
2407 location of all existing and proposed structures, sewage collection and treatment facilities, utility installations,  
2408 roadways, and other related appurtenances or facilities, including those on adjacent uplands; a statement  
2409 indicating whether use of a living shoreline as defined in § 28.2-104.1 for a shoreline management practice is  
2410 not suitable, including reasons for the determination; a description of the type of equipment to be used and  
2411 the means of equipment access to the activity site; the names and addresses of owners of record of adjacent  
2412 land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an  
2413 estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further  
2414 projects; the public benefit to be derived from the proposed project; a complete description of measures to be  
2415 taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed  
2416 work, project, or structure; and such additional materials and documentation as the wetlands board may  
2417 require.

2418 C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the  
2419 applicable governing body with due regard for the services to be rendered, including the time, skill, and  
2420 administrator's expense involved.

2421 § 5. All applications, maps, and documents submitted shall be open for public inspection at the office  
2422 designated by the applicable governing body and specified in the public notice for public hearing required  
2423 under § 6 of this ordinance.

2424 § 6. Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public  
2425 hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land  
2426 adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in  
2427 question, the Virginia Institute of Marine Science, the Department of Wildlife Resources, the ~~State Water~~  
2428 ~~Control Board~~ *Department of Environmental Quality*, the Department of Transportation, and any  
2429 governmental agency expressing an interest in the application shall be notified of the hearing. The  
2430 Commission or board shall mail or email these notices not less than 20 days prior to the date set for the  
2431 hearing. The board shall also (i) cause notice of the hearing to be published at least once in the seven days  
2432 prior to such hearing in a newspaper of general circulation in this \_\_\_\_\_ (county, city, or town); (ii) post  
2433 a notice of the hearing on its website at least 14 days prior to such hearing; and (iii) provide a copy of such  
2434 notice to the Commission for submittal to the Virginia Regulatory Town Hall. The published notice shall  
2435 specify the place or places within this \_\_\_\_\_ (county, city, or town) where copies of the application may  
2436 be examined. The costs of publication shall be paid by the applicant. In the event that the board submits a  
2437 correct and timely notice for publication and the newspaper fails to publish the notice or publishes the notice  
2438 incorrectly, the board shall be deemed to have met the notice requirements of this subsection so long as the  
2439 notice is published in the next available edition of such newspaper.

2440 § 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-  
2441 member board or four members of a seven-member board.

2442 B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the  
2443 attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may  
2444 submit a concise written statement of his testimony. The board shall make a record of the proceeding, which  
2445 shall include the application, any written statements of witnesses, a summary of statements of all witnesses,  
2446 the findings and decision of the board, and the rationale for the decision.

2447 C. The board shall make its determination within 30 days of the hearing. If the board fails to act within



2448 that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall  
 2449 notify the applicant and the Commissioner of its determination. If the board fails to make a determination  
 2450 within the 30-day period, it shall promptly notify the applicant and the Commission that the application is  
 2451 deemed approved. For purposes of this section, "act" means taking a vote on the application. If the  
 2452 application receives less than four affirmative votes from a seven-member board or less than three affirmative  
 2453 votes from a five-member board, the permit shall be denied.

2454 D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the  
 2455 Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The  
 2456 record shall be open for public inspection at the same office as was designated under § 5 of this ordinance.

2457 § 8. The board may require a reasonable bond or letter of credit in an amount and with surety and  
 2458 conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations  
 2459 set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a  
 2460 permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or  
 2461 has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a  
 2462 permit if the applicant fails to comply with the terms and conditions set forth in the application.

2463 § 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the  
 2464 despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic  
 2465 development in a manner consistent with wetlands preservation and any standards set by the Commonwealth  
 2466 in addition to those identified in § 28.2-1308 to ensure protection of shorelines and sensitive coastal habitats  
 2467 from sea level rise and coastal hazards, including the provisions of guidelines and minimum standards  
 2468 promulgated by the Commission pursuant to § 28.2-1301 of the Code of Virginia.

2469 § 10. A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider  
 2470 the following:

- 2471 1. The testimony of any person in support of or in opposition to the permit application;
- 2472 2. The impact of the proposed development on the public health, safety, and welfare; and
- 2473 3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of  
 2474 Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

2475 B. The board shall grant the permit if all of the following criteria are met:

- 2476 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and  
 2477 private detriment.
- 2478 2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of  
 2479 Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.
- 2480 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-  
 2481 1300 et seq.) of Title 28.2 of the Code of Virginia.

2482 C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board  
 2483 shall deny the permit application but allow the applicant to resubmit the application in modified form.

2484 § 11. The permit shall be in writing and signed by the chairman of the board or his authorized  
 2485 representative. A copy of the permit shall be transmitted to the Commissioner.

2486 § 12. No permit shall be granted without an expiration date established by the board. Upon proper  
 2487 application, the board may extend the permit expiration date.

2488 § 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land use  
 2489 ordinances of this \_\_\_\_\_ (county, city, or town) or the right of any person to seek compensation for any  
 2490 injury in fact incurred by him because of the proposed activity.

2491 **§ 28.2-1403. Certain counties, cities, and towns authorized to adopt coastal primary sand dune**  
 2492 **ordinance.**

2493 Any of the following counties, cities and towns that adopt a wetlands zoning ordinance pursuant to § 28.2-  
 2494 1302 may adopt the coastal primary sand dune zoning ordinance that is set out in this section: the Counties of  
 2495 Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico,  
 2496 Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex,  
 2497 New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania,  
 2498 Stafford, Surry, Westmoreland, and York; the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax,  
 2499 Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson,  
 2500 Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg; and the Town of Cape Charles. In the  
 2501 event that a locality has not adopted a wetlands zoning ordinance pursuant to Chapter 13 (§ 28.2-1300 et seq.)  
 2502 or repeals it if already adopted, such locality may adopt or continue to administer the ordinance contained  
 2503 herein provided the locality appoints a wetlands board following the procedure specified in § 28.2-1303. Any  
 2504 county or city that has adopted the Coastal Primary Sand Dune Zoning Ordinance prior to January 1, 2024,  
 2505 shall amend the ordinance to conform it to the ordinance contained herein by January 1, 2024. The following  
 2506 ordinance is the only coastal primary sand dune zoning ordinance under which any board shall operate after  
 January 1, 2024.

2507 Coastal Primary Sand Dune Zoning Ordinance

2508 § 1. The governing body of \_\_\_\_\_, acting pursuant to Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of

2509 the Code of Virginia, adopts this ordinance regulating the use and development of coastal primary sand  
 2510 dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also  
 2511 include beaches.

2512 § 2. As used in this ordinance, unless the context requires a different meaning:

2513 "Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a  
 2514 mutual interaction of the forces of erosion, sediment transport, and deposition that extends from the low  
 2515 water line landward to where there is a marked change in either material composition or physiographic form  
 2516 such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation  
 2517 (usually the effective limit of stormwaves), or the nearest impermeable man-made structure, such as a  
 2518 bulkhead, revetment, or paved road.

2519 "Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil that is contiguous to  
 2520 mean high water, whose landward and lateral limits are marked by a change in grade from 10 percent or  
 2521 greater to less than 10 percent, and upon which is growing any of the following species: American beach  
 2522 grass (*Ammophila breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostyles* spp.); dusty  
 2523 miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Honckenya peploides*);  
 2524 sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*);  
 2525 Japanese sedge or Asiatic sand sedge (*Carex kobomugi*); Virginia pine (*Pinus virginiana*); broom sedge  
 2526 (*Andropogon virginicus*); and short dune grass (*Panicum amarum*). For purposes of this ordinance, "coastal  
 2527 primary sand dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person  
 2528 for the purpose of temporary storage, beach replenishment, or beach nourishment, nor shall the slopes of any  
 2529 such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

2530 "Commission" means the Virginia Marine Resources Commission.

2531 "Commissioner" means the Commissioner of Marine Resources.

2532 "County, city and town" means the governing body of the county, city and town.

2533 "Governmental activity" means any of the services provided by the Commonwealth or a county, city, or  
 2534 town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services  
 2535 as constructing, repairing, and maintaining roads; providing street lights and sewage facilities; supplying and  
 2536 treating water; and constructing public buildings.

2537 "Wetlands board" or "board" means the board created pursuant to § 28.2-1303 of the Code of Virginia.

2538 § 3. The following uses of and activities in dunes are authorized if otherwise permitted by law:

2539 1. The construction and maintenance of noncommercial walkways that do not alter the contour of the  
 2540 coastal primary sand dune;

2541 2. The construction and maintenance of observation platforms that are not an integral part of any dwelling  
 2542 and that do not alter the contour of the coastal primary sand dune;

2543 3. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand  
 2544 dunes;

2545 4. The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the  
 2546 purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the  
 2547 placement of any material that presents a public health or safety hazard;

2548 5. Sand replenishment activities of any private or public concern, provided no sand shall be removed from  
 2549 any coastal primary sand dune unless authorized by lawful permit;

2550 6. The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control  
 2551 beach erosion that may abut a coastal primary sand dune;

2552 7. The normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the  
 2553 United States, this Commonwealth or any of its counties or cities, or of any person, provided no coastal  
 2554 primary sand dunes are altered;

2555 8. Outdoor recreational activities, provided the activities do not alter the natural contour of the coastal  
 2556 primary sand dune or destroy the vegetation growing thereon;

2557 9. The conservation and research activities of the Commission, Virginia Institute of Marine Science,  
 2558 Department of Wildlife Resources, and other conservation-related agencies;

2559 10. The construction and maintenance of aids to navigation that are authorized by governmental authority;

2560 11. Activities pursuant to any emergency declaration by the governing body of any local government or  
 2561 the Governor of the Commonwealth or any public health officer for the purposes of protecting the public  
 2562 health and safety;

2563 12. Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a  
 2564 political subdivision thereof; and

2565 13. The construction of living shoreline projects authorized pursuant to a general permit developed under  
 2566 subsection B of § 28.2-104.1.

2567 § 4. A. Any person who desires to use or alter any coastal primary sand dune within this \_\_\_\_\_ (county,  
 2568 city, or town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall  
 2569 first file an application directly with the wetlands board or with the Commission.

2570 B. The permit application shall include the following: the name and address of the applicant; a detailed

2571 description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area  
 2572 of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and  
 2573 excavation, the location, width, depth, and length of any disposal area, and the location of all existing and  
 2574 proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other  
 2575 related appurtenances or facilities, including those on adjacent uplands; a description of the type of  
 2576 equipment to be used and the means of equipment access to the activity site; the names and addresses of  
 2577 owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary  
 2578 purposes of the project, including further projects; the public benefit to be derived from the proposed project;  
 2579 a complete description of measures to be taken during and after the alteration to reduce detrimental offsite  
 2580 effects; the completion date of the proposed work, project, or structure; and such additional materials and  
 2581 documentation as the wetlands board may require.

2582 C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the  
 2583 applicable governing body with due regard for the services to be rendered, including the time, skill, and  
 2584 administrator's expense. No person shall be required to file two separate applications for permits if the  
 2585 proposed project will require permits under this ordinance and Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2  
 2586 of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this ordinance.

2587 § 5. All applications, maps, and documents submitted shall be open for public inspection at the office of  
 2588 the recording officer of this \_\_\_\_\_ (county, city or town).

2589 § 6. Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public  
 2590 hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land  
 2591 adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the  
 2592 Department of Wildlife Resources, the ~~State Water Control Board~~ *Department of Environmental Quality*, the  
 2593 Department of Transportation, and any governmental agency expressing an interest in the application shall be  
 2594 notified of the hearing. The Commission or board shall mail or email these notices not less than 20 days prior  
 2595 to the date set for the hearing. The board shall also (i) cause notice of the hearing to be published at least once  
 2596 in the seven days prior to such hearing in a newspaper of general circulation in this \_\_\_\_\_ (county, city or  
 2597 town); (ii) post a notice of the hearing on its website at least 14 days prior to such hearing; and (iii) provide a  
 2598 copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall. The costs of  
 2599 publication shall be paid by the applicant. In the event that the board submits a correct and timely notice for  
 2600 publication and the newspaper fails to publish the notice or publishes the notice incorrectly, the board shall be  
 2601 deemed to have met the notice requirements of this subsection so long as the notice is published in the next  
 2602 available edition of such newspaper.

2603 § 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-  
 2604 member board or four members of a seven-member board.

2605 B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the  
 2606 attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the  
 2607 hearing may submit a concise written statement of his testimony. The board shall make a record of the  
 2608 proceeding, which shall include the application, any written statements of witnesses, a summary of statements  
 2609 of all witnesses, the findings and decision of the board, and the rationale for the decision.

2610 C. The board shall make its determination within 30 days of the hearing. If the board fails to act within  
 2611 that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall  
 2612 notify the applicant and the Commissioner of its determination. If the board fails to make a determination  
 2613 within the 30-day period, it shall promptly notify the applicant and the Commission that the application is  
 2614 deemed approved.

2615 D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the  
 2616 Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The  
 2617 record shall be open for public inspection at the office of the recording officer of this \_\_\_\_\_ (county, city,  
 2618 or town).

2619 § 8. The board may require a reasonable bond or letter of credit in an amount and with surety and  
 2620 conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations  
 2621 set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a  
 2622 permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or  
 2623 has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a  
 2624 permit if the applicant fails to comply with the terms and conditions set forth in the application.

2625 § 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal  
 2626 primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical,  
 2627 the board shall accommodate necessary economic development in a manner consistent with the protection of  
 2628 these features.

2629 § 10. A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider  
 2630 the following:

- 2631 1. The testimony of any person in support of or in opposition to the permit application;
- 2632 2. The impact of the proposed development on the public health, safety, and welfare; and

2633 3. The proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of  
 2634 Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

2635 B. The board shall grant the permit if all of the following criteria are met:

2636 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and  
 2637 private detriment.

2638 2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of  
 2639 Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

2640 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14 (§ 28.2-  
 2641 1400 et seq.) of Title 28.2 of the Code of Virginia.

2642 C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board  
 2643 shall deny the permit application but allow the applicant to resubmit the application in modified form.

2644 § 11. The permit shall be in writing and signed by the chairman of the board. A copy of the permit shall be  
 2645 transmitted to the Commissioner.

2646 § 12. No permit shall be granted without an expiration date established by the board. Upon proper  
 2647 application, the board may extend the permit expiration date.

2648 § 13. No permit granted by a wetlands board shall in any way affect the right of any person to seek  
 2649 compensation for any injury in fact incurred by him because of the permitted activity.

2650 **§ 29.1-203. Jurisdiction; power to serve process.**

2651 A. Conservation police officers shall have jurisdiction throughout the Commonwealth to enforce the  
 2652 hunting, trapping and inland fish laws and may serve process in all matters arising from violations of such  
 2653 laws.

2654 B. Conservation police officers shall enforce the ~~State Water Control Board's~~ regulations of the Board of  
 2655 Environmental Resources designating Smith Mountain Lake as a no-discharge zone for boat sewage.

2656 **§ 29.1-213. Taking samples of water believed to be polluted.**

2657 Any conservation police officer appointed under the provisions of this title may, and shall when requested  
 2658 by a member of the governing body of a county, city, or town, take samples of water from any stream in this  
 2659 Commonwealth when he has reason to believe that the water may be polluted. Any conservation police  
 2660 officer collecting any water sample shall take the sample in a clean container, seal it, and send it to the ~~State~~  
 2661 ~~Water Control Board~~ Department of Environmental Quality. With the sample, the conservation police officer  
 2662 shall enclose a signed statement showing in reasonable detail the time and place at which the sample was  
 2663 taken. The officer shall keep the original of the statement and send the copy with the sample.

2664 **§ 29.1-214. Duties of Board of Environmental Resources with respect to water samples.**

2665 Upon the receipt of any water sample sent under § 29.1-213, the ~~State Water Control Board~~ Department  
 2666 of Environmental Quality shall have a chemical analysis of the sample made by a chemist employed by the  
 2667 ~~State Water Control Board~~ Department of Environmental Quality or retained especially for that purpose. If  
 2668 the results of the analysis show that the sample of water was polluted, the ~~State Water Control Board~~  
 2669 Department of Environmental Quality shall initiate further studies and analyses to determine the nature,  
 2670 extent, and most effective measures of control of the pollution.

2671 The ~~State Water Control Board~~ Department of Environmental Quality shall then proceed as provided in  
 2672 ~~Chapter 3-1 of the State Water Control Law~~ (§ 62.1-44.2 et seq.) of Title 62.1.

2673 **§ 32.1-163. Definitions.**

2674 As used in this article, unless the context clearly requires a different meaning:

2675 "Alternative discharging sewage system" means any device or system which results in a point source  
 2676 discharge of treated sewage for which the Board may issue a permit authorizing construction and operation  
 2677 when such system is regulated by the ~~State Water Control Board~~ Board of Environmental Resources pursuant to a  
 2678 general Virginia Pollutant Discharge Elimination System permit issued for an individual single family  
 2679 dwelling with flows less than or equal to 1,000 gallons per day.

2680 "Alternative onsite sewage system" or "alternative onsite system" means a treatment works that is not a  
 2681 conventional onsite sewage system and does not result in a point source discharge.

2682 "Betterment loan" means a loan to be provided by private lenders either directly or through a state agency,  
 2683 authority or instrumentality or a locality or local or regional authority serving as a conduit lender, to repair,  
 2684 replace, or upgrade an onsite sewage system or an alternative discharging sewage system for the purpose of  
 2685 reducing threats to public health and ground and surface waters, which loan is secured by a lien with a  
 2686 priority equivalent to the priority of a lien securing an assessment for local improvements under § 15.2-2411.

2687 "Conduit lender" means a state agency, authority or instrumentality or a locality, local or regional  
 2688 authority or an instrumentality thereof serving as a conduit lender of betterment loans.

2689 "Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks  
 2690 with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

2691 "Licensed onsite soil evaluator" means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of  
 2692 Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil  
 2693 properties in relationship to the effects of these properties on the use and management of these soils as the

2694 locations for onsite sewage systems.

2695 "Maintenance" means, unless otherwise provided in local ordinance, (i) performing adjustments to  
 2696 equipment and controls or (ii) in-kind replacement of normal wear and tear parts that do not require a  
 2697 construction permit for adjustment or replacement of the component such as light bulbs, fuses, filters, pumps,  
 2698 motors, sewer lines, conveyance lines, distribution boxes, header lines, or other like components.  
 2699 "Maintenance" includes pumping the tanks or cleaning the building sewer on a periodic basis.  
 2700 Notwithstanding any local ordinance, "maintenance" does not include replacement of tanks, drainfield piping,  
 2701 subsurface drainfields, or work requiring a construction permit and installer. Unless otherwise prohibited by  
 2702 local ordinance, a conventional onsite sewage system installer or an alternative onsite sewage system installer  
 2703 may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer  
 2704 lines, conveyance lines, distribution boxes, and header lines.

2705 "Operate" means the act of making a decision on one's own volition (i) to place into or take out of service  
 2706 a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process at a  
 2707 treatment works.

2708 "Operation" means the biological, chemical, and mechanical processes of transforming sewage or  
 2709 wastewater to compounds or elements and water that no longer possess an adverse environmental or health  
 2710 impact.

2711 "Operator" means any individual employed or contracted by any owner, who is licensed or certified under  
 2712 Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, monitor, and maintain an  
 2713 alternative onsite sewage system.

2714 "Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts,  
 2715 sanitation district commissions and authorities, any individual, any group of individuals acting individually or  
 2716 as a group, or any public or private institution, corporation, company, partnership, firm or association which  
 2717 owns or proposes to own a sewerage system or treatment works.

2718 "Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or  
 2719 adopted by the State Board of Health.

2720 "Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

2721 "Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or  
 2722 lavatory wastes, separately or together with such underground, surface, storm and other water and liquid  
 2723 industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other  
 2724 places.

2725 "Sewerage system" means pipelines or conduits, pumping stations and force mains and all other  
 2726 construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to  
 2727 a treatment works or point of ultimate disposal.

2728 "Subsurface drainfield" means a system installed within the soil and designed to accommodate treated  
 2729 sewage from a treatment works.

2730 "Transportation" means the vehicular conveyance of sewage.

2731 "Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of  
 2732 sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and  
 2733 other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an  
 2734 integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from  
 2735 such treatment.

2736 **§ 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of**  
 2737 **permits; inspections; civil penalties.**

2738 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,  
 2739 transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging  
 2740 sewage systems, and treatment works as they affect the public health and welfare. The Board shall also have  
 2741 supervision and control over the maintenance, inspection, and reuse of alternative onsite sewage systems as  
 2742 they affect the public health and welfare. In discharging the responsibility to supervise and control the safe  
 2743 and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall  
 2744 exercise due diligence to protect the quality of both surface water and ground water. Upon the final adoption  
 2745 of a general Virginia Pollutant Discharge Elimination permit by the ~~State Water Control~~ Board of  
 2746 *Environmental Resources*, the Board of Health shall assume the responsibility for permitting alternative  
 2747 discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable  
 2748 regulations of the ~~State Water Control~~ Board of *Environmental Resources* and be registered with the ~~State~~  
 2749 ~~Water Control Board~~ *Department of Environmental Quality*.

2750 In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall  
 2751 require and the Department shall conduct regular inspections of alternative discharging sewage systems. The  
 2752 Board shall also establish requirements for maintenance contracts for alternative discharging sewage systems.  
 2753 The Board may require, as a condition for issuing a permit to operate an alternative discharging sewage  
 2754 system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the

2755 life of any general Virginia Pollutant Discharge Elimination System permit issued by the ~~State Water Control~~  
2756 Board of *Environmental Resources*.

2757 B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and  
2758 disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the  
2759 maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be designed  
2760 to protect the public health and promote the public welfare and may include, without limitation:

2761 1. A requirement that the owner obtain a permit from the Commissioner prior to the construction,  
2762 installation, modification or operation of a sewerage system or treatment works except in those instances  
2763 where a permit is required pursuant to ~~Chapter 3.1~~ *the State Water Control Law* (§ 62.1-44.2 et seq.) of ~~Title~~  
2764 ~~62.1~~.

2765 2. Criteria for the granting or denial of such permits.

2766 3. Standards for the design, construction, installation, modification and operation of sewerage systems and  
2767 treatment works for permits issued by the Commissioner.

2768 4. Standards governing disposal of sewage on or in soils.

2769 5. Standards specifying the minimum distance between sewerage systems or treatment works and:

2770 a. Public and private wells supplying water for human consumption,

2771 b. Lakes and other impounded waters,

2772 c. Streams and rivers,

2773 d. Shellfish waters,

2774 e. Ground waters,

2775 f. Areas and places of human habitation,

2776 g. Property lines.

2777 6. Standards as to the adequacy of an approved water supply.

2778 7. Standards governing the transportation of sewage.

2779 8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.

2780 9. A requirement that such residences, buildings, structures and other places designed for human  
2781 occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

2782 10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted  
2783 through the then current sewage handling and disposal regulations, to treat and dispose of sewage as  
2784 effectively as approved methods.

2785 11. Standards for inspections of and requirements for maintenance contracts for alternative discharging  
2786 sewage systems.

2787 12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement  
2788 that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or  
2789 operation of an alternative discharging sewage system as defined in § 32.1-163.

2790 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage systems.

2791 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system  
2792 permits.

2793 15. Performance requirements for nitrogen discharged from alternative onsite sewage systems that protect  
2794 public health and ground and surface water quality.

2795 16. Consideration of the impacts of climate change on proposed treatment works based on research and  
2796 analysis from the Center for Coastal Resources Management at the Virginia Institute of Marine Science at  
2797 The College of William and Mary in Virginia.

2798 C. A fee of \$75 shall be charged for filing an application for an onsite sewage system or an alternative  
2799 discharging sewage system permit with the Department. Funds received in payment of such charges shall be  
2800 transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be  
2801 appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying  
2802 out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite Sewage  
2803 Indemnification Fund established pursuant to § 32.1-164.1:01.

2804 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes  
2805 are below the federal poverty guidelines established by the ~~United States~~ *U.S.* Department of Health and  
2806 Human Services or when the application is for a pit privy or the repair of a failing onsite sewage system. If  
2807 the Department denies the permit for land on which the applicant seeks to construct his principal place of  
2808 residence, then such fee shall be refunded to the applicant.

2809 From such funds as are appropriated to the Department from the special fund, the Board shall apportion a  
2810 share to local or district health departments to be allocated in the same ratios as provided for the operation of  
2811 such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health  
2812 departments on a quarterly basis.

2813 D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and  
2814 disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards,  
2815 give due consideration to economic costs of such standards in accordance with the applicable provisions of

2816 the Administrative Process Act (§ 2.2-4000 et seq.).

2817 E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of alternative  
2818 discharging sewage systems as may be required by the Board. The funds received in payment of such fees  
2819 shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the  
2820 Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be  
2821 credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

2822 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes  
2823 are below the federal poverty guidelines established by the ~~United States~~ U.S. Department of Health and  
2824 Human Services.

2825 F. Any owner who violates any provision of this section or any regulation of the Board of Health or the  
2826 ~~State Water Control~~ Board of Environmental Resources relating to alternative discharging sewage systems or  
2827 who fails to comply with any order of the Board of Health or any special final order of the ~~State Water~~  
2828 ~~Control Board~~ Department of Environmental Quality shall be subject to the penalties provided in §§ 32.1-27  
2829 and 62.1-44.32.

2830 In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent  
2831 may initiate a civil action against any user or users of an alternative discharging sewage system to recover  
2832 that portion of any civil penalty imposed against the owner which directly resulted from violations by the user  
2833 or users of any applicable federal, state, or local laws, regulations, or ordinances.

2834 G. The Board shall establish and implement procedures for issuance of letters recognizing the  
2835 appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. The Board  
2836 may require that a survey plat be included with an application for such letter. Such letters shall state, in  
2837 language determined by the Office of the Attorney General and approved by the Board, the appropriateness  
2838 of the soil for an onsite sewage system; no system design shall be required for issuance of such letter. The  
2839 letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part  
2840 of the site or proposed site of the onsite sewage system is to be located so as to be a binding notice to the  
2841 public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is  
2842 the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued  
2843 on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial,  
2844 intervening change in the soil or site conditions where the onsite sewage system is to be located. The Board,  
2845 Commissioner, and the Department shall accept evaluations from licensed onsite soil evaluators for the  
2846 issuance of such letters, if they are produced in accordance with the Board's established procedures for  
2847 issuance of letters. The Department shall issue such letters within 20 working days of the application filing  
2848 date when evaluations produced by licensed onsite soil evaluators are submitted as supporting  
2849 documentation. The Department shall not be required to do a field check of the evaluation prior to issuing  
2850 such a letter or a permit based on such letter; however, the Department may conduct such field analyses as  
2851 deemed necessary to protect the integrity of the Commonwealth's environment. Applicants for such letters in  
2852 lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and,  
2853 upon application for an onsite sewage system permit, shall pay the permit application fee.

2854 H. The Board shall establish a program for the operation and maintenance of alternative onsite systems.  
2855 The program shall require:

2856 1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system  
2857 operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the  
2858 operation permit;

2859 2. The licensed operator to provide a report on the results of the site visit utilizing the web-based system  
2860 required by this subsection. A fee of \$1 shall be paid by the licensed operator at the time the report is filed.  
2861 Such fees shall be credited to the Onsite Operation and Maintenance Fund established pursuant to § 32.1-  
2862 164.8;

2863 3. A statewide web-based reporting system to track the operation, monitoring, and maintenance  
2864 requirements of each system, including its components. The system shall have the capability for pre-  
2865 notification of operation, maintenance, or monitoring to the operator or owner. Licensed operators shall be  
2866 required to enter their reports onto the system. The Department of Health shall utilize the system to provide  
2867 for compliance monitoring of operation and maintenance requirements throughout the state. The  
2868 Commissioner shall consider readily available commercial systems currently utilized within the  
2869 Commonwealth; and

2870 4. Any additional requirements deemed necessary by the Board.

2871 I. The Board shall promulgate regulations governing the requirements for maintaining alternative onsite  
2872 sewage systems.

2873 J. The Board shall establish a uniform schedule of civil penalties for violations of (i) regulations  
2874 promulgated pursuant to subsection B and (ii) onsite treatment system pump-out requirements promulgated  
2875 pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) in localities in which compliance  
2876 with such onsite treatment system pump-out requirements is managed and enforced by the Department that

2877 are not remedied within 30 days after service of notice from the Department. Civil penalties collected  
 2878 pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund  
 2879 established pursuant to § 32.1-248.3.

2880 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for  
 2881 any one violation shall be not more than \$100 for the initial violation and not more than \$150 for each  
 2882 additional violation. Each day during which the violation is found to have existed shall constitute a separate  
 2883 offense. However, specified violations arising from the same operative set of facts shall not be charged more  
 2884 than once in any 10-day period, and a series of specified violations arising from the same operative set of  
 2885 facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not apply to unoccupied  
 2886 structures which do not contribute to the pollution of public or private water supplies or the contraction or  
 2887 spread of infectious, contagious, or dangerous diseases. The Department may pursue other remedies as  
 2888 provided by law; however, designation of a particular violation for a civil penalty pursuant to this section  
 2889 shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to  
 2890 the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or  
 2891 dangerous diseases.

2892 The Department may issue a civil summons ticket as provided by law for a scheduled violation. Any  
 2893 person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing  
 2894 by mail to the Department prior to the date fixed for trial in court. Any person so appearing may enter a  
 2895 waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

2896 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability,  
 2897 the violation shall be tried in the general district court with jurisdiction in the same manner and with the same  
 2898 right of appeal as provided for by law. In any trial for a scheduled violation, the Department shall have the  
 2899 burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of  
 2900 liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding.

2901 This section shall not be interpreted to allow the imposition of civil penalties for activities related to land  
 2902 development.

2903 K. The Department shall establish procedures for requiring a survey plat as part of an application for a  
 2904 permit or letter for any onsite sewage or alternative discharging sewage system, and for granting waivers for  
 2905 such requirements. In all cases, it shall be the landowner's responsibility to ensure that the system is properly  
 2906 located as permitted.

2907 L. Effective July 1, 2023, requirements promulgated under the Chesapeake Bay Preservation Act (§ 62.1-  
 2908 44.15:67 et seq.) directly related to compliance with onsite sewage treatment system pump-outs shall be  
 2909 managed and enforced by the Department in Accomack, Essex, Gloucester, King and Queen, King William,  
 2910 Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties,  
 2911 and the incorporated towns within those counties. Licensed operators conducting onsite sewage treatment  
 2912 system pump-outs pursuant to requirements promulgated under the Chesapeake Bay Preservation Act (~~§~~  
 2913 ~~62.1-44.15:67 et seq.~~) in localities managed and enforced by the Department shall provide a report on the  
 2914 results of the site visit using a web-based reporting system developed by the Department. Any person who  
 2915 violates the onsite treatment system pump-out requirements promulgated pursuant to the Chesapeake Bay  
 2916 Preservation Act (~~§ 62.1-44.15:67 et seq.~~) in a locality in which compliance with such onsite treatment  
 2917 system pump-out requirements is managed and enforced by the Department is guilty of a Class 3  
 2918 misdemeanor.

2919 **§ 32.1-176.7. Other agencies to cooperate with Department.**

2920 The Department of Housing and Community Development and the ~~State Water Control Board~~  
 2921 *Department of Environmental Quality* shall cooperate fully and promptly with the Department of Health in  
 2922 the administration of this article.

2923 **§ 32.1-233. Radiation Advisory Board; composition; duties generally.**

2924 A. The Radiation Advisory Board shall consist of ~~ten~~ *appointive 10 nonlegislative citizen* members and  
 2925 ~~the six ex officio members specified below.~~ The Governor shall appoint to the Advisory Board individuals  
 2926 from industry, labor, and agriculture as well as individuals with scientific training in one or more of the  
 2927 following fields: radiology, medicine, radiation or health physics, or related sciences, with specialization in  
 2928 ionizing radiation. Not more than two individuals shall be specialists in any one of the above-named fields.  
 2929 Members of the Advisory Board shall serve at the pleasure of the Governor. The Commissioner shall be an ex  
 2930 officio member and chairman of the Advisory Board. The Commissioner of Labor and Industry, the  
 2931 Commissioner of Agriculture and Consumer Services, the State Coordinator of Emergency Management, the  
 2932 Director of the *Department of Environmental Quality*, and the Director of the Virginia Institute of Marine  
 2933 Science shall be ex officio members of the Advisory Board.

2934 B. The Advisory Board shall meet at least annually and shall:

- 2935 1. Review and evaluate policies and programs of the Commonwealth relating to ionizing radiation; and
- 2936 2. Make recommendations to the Commissioner and the Board of Health, the Director of the *Department*  
 2937 of Environmental Quality, and the ~~Virginia Waste Management~~ *Board of Environmental Resources* and



2938 furnish such technical advice as may be required; on matters relating to development, utilization, and  
 2939 regulation of sources of ionizing radiation.

2940 **§ 36-99.6. Underground and aboveground storage tank inspections.**

2941 A. The Board of Housing and Community Development shall incorporate, as part of the Building Code,  
 2942 regulations adopted and promulgated by the ~~State Water Control~~ *Board of Environmental Resources*  
 2943 governing the installation, repair, upgrade, and closure of underground and aboveground storage tanks.

2944 B. Inspections undertaken pursuant to such Building Code regulations shall be done by employees of the  
 2945 local building department or another individual authorized by the local building department.

2946 **§ 44-146.30. Department of Emergency Management to monitor transportation of hazardous**  
 2947 **radioactive materials.**

2948 The ~~State Coordinator of the Department~~ of Emergency Management, pursuant to regulations  
 2949 promulgated by the ~~Virginia Waste Management~~ *Board of Environmental Resources*, ~~will~~ shall maintain a  
 2950 register of shippers of hazardous radioactive materials and monitor the transportation within the  
 2951 Commonwealth of those hazardous radioactive materials, as defined by the ~~Virginia Waste Management~~  
 2952 *Board of Environmental Resources*, ~~which that~~ may constitute a significant potential danger to the citizens of  
 2953 the Commonwealth in the event of accidental spillage or release. The regulations promulgated by the Board  
 2954 *of Environmental Resources* shall not be in conflict with federal statutes, rules, or regulations. Other agencies  
 2955 and commissions of the Commonwealth shall cooperate with the ~~Virginia Waste Management~~ *Board of*  
 2956 *Environmental Resources* in the formulation of regulations as ~~herein~~ provided *in this section*.

2957 **§ 45.2-1701.1. Public disclosure of certain electric generating facility closures.**

2958 A. The provisions of this section shall apply to any electric generating facility that:

- 2959 1. Has a nameplate generating capacity of 80 megawatts or more;
- 2960 2. Is located in the Commonwealth;
- 2961 3. Emits carbon dioxide as a byproduct of combusting fuel, whether or not certificated by the State  
 2962 Corporation Commission pursuant to subsection D of § 56-580; and
- 2963 4. Is subject to, and not exempt from, regulations adopted pursuant to subsection E of § 10.1-1308 or §  
 2964 10.1-1330.

2965 B. Within 30 days of an owner of an electric generating facility making public the decision to close such  
 2966 facility, or within 30 days of the owner of an electric generating facility making a filing with the U.S.  
 2967 Securities and Exchange Commission regarding a material impact to the cost, operations, or financial  
 2968 condition of the owner, which material impact is a direct precursor to the closure of the electric generating  
 2969 facility, the owner shall send a written notice of the impending closure to:

- 2970 1. The governing body of the locality where the facility is located;
- 2971 2. The governing body of any locality adjoining the locality where the facility is located;
- 2972 3. Any town council located within a county described in subdivision 1;
- 2973 4. Any planning district commission of any locality described in subdivision 1 or 2;
- 2974 5. The State Corporation Commission Division of Public Utility Regulation;
- 2975 6. The Department and the Division;
- 2976 7. The Department of Housing and Community Development;
- 2977 8. PJM Interconnection, LLC;
- 2978 9. The Virginia Employment Commission;
- 2979 10. The Department of Environmental Quality; and
- 2980 11. The Virginia Council on Environmental Justice.

2981 C. The notice required by subsection B shall include, at a minimum, (i) the anticipated closure date of the  
 2982 facility; (ii) references to any website maintained by the owner containing closure information; (iii) a list of  
 2983 permits obtained from a local government, the ~~State Air Pollution Control Board~~, the ~~State Water Control~~  
 2984 *Board of Environmental Resources*, or the Department of Environmental Quality, including the permit  
 2985 number and date of issuance; (iv) anticipated future use of the facility site, if known; (v) workforce transition  
 2986 assistance information; and (vi) decommissioning information. If the owner of the facility is a registrant with  
 2987 the U.S. Securities and Exchange Commission, any filings mentioning the impending closure shall also be  
 2988 included with the notice.

2989 D. In the six months following receipt of the notice required by subsection B, the governing body of the  
 2990 locality where the facility is located shall conduct at least three public hearings, which may be part of a  
 2991 regular meeting agenda, where at least one representative of the owner of the facility being closed shall be  
 2992 present, make a presentation regarding the impending closure, and take questions from the governing body  
 2993 and the public.

2994 E. In the six months following receipt of the notice required by subsection B, the planning district  
 2995 commission of the locality where the facility is located shall conduct at least one public hearing, which may  
 2996 be part of a regular meeting agenda, where at least one representative of the owner of the facility being closed  
 2997 shall be present, make a presentation regarding the impending closure, and take questions from the planning  
 2998 district commission and the public.

2999 F. The Division shall maintain a public website listing the facilities subject to this section and their

3000 anticipated closure dates, if such dates are reasonably known by virtue of the laws of the Commonwealth or a  
 3001 public record or filing with an agency of the Commonwealth, including the State Corporation Commission,  
 3002 and a link shall be provided to the facilities' environmental protection or remediation obligations included in  
 3003 permits obtained from the Department, ~~State Air Pollution Control Board, State Water Control Board of~~  
 3004 *Environmental Resources*, Department of Environmental Quality, or local governing body. At least every 12  
 3005 months, the State Corporation Commission shall transmit to the Division any information that it reasonably  
 3006 believes would necessitate updates to the anticipated closure dates or other information contained on the  
 3007 Division's website.

3008 G. As providing advance notice to affected communities of an impending closure of a facility under this  
 3009 section is a matter of vital importance for public policy, this section shall be liberally construed. The  
 3010 obligations imposed on agencies of the Commonwealth under this section are to be construed in favor of  
 3011 public disclosure of the information required by subsection F.

3012 H. Notwithstanding the provisions of subsection A, the provisions of this section shall not apply to any  
 3013 electric generating facility that has a nameplate generating capacity of 90 megawatts or less and that filed a  
 3014 deactivation notice with PJM Interconnection, LLC, prior to September 1, 2019.

3015 **§ 45.2-1711. Schedule for the Plan.**

3016 A. The Division shall complete the Plan.

3017 B. Prior to the completion of the Plan and each update thereof, the Division shall present drafts to, and  
 3018 consult with, the Virginia Coal and Energy Commission established pursuant to Chapter 25 (§ 30-188 et seq.)  
 3019 of Title 30 and the Commission on Electric Utility Regulation established pursuant to Chapter 31 (§ 30-201 et  
 3020 seq.) of Title 30.

3021 C. The Plan shall be updated by the Division and submitted as provided in § 45.2-1713 by October 1,  
 3022 2014, and every fourth October 1 thereafter. In addition, the Division shall provide interim updates on the  
 3023 Plan by October 1 of the third year of each Governor's administration. Updated reports shall specify any  
 3024 progress attained toward each proposed action of the Plan, as well as reassess goals for energy conservation  
 3025 on the basis of progress to date in meeting the goals in the previous Plan and lessons learned from attempts to  
 3026 meet such goals.

3027 D. Beginning with the Plan update in 2014, the Division shall include a section setting forth energy policy  
 3028 positions relevant to any potential regulations proposed or promulgated by the ~~State Air Pollution Control~~  
 3029 *Board of Environmental Resources* to reduce carbon dioxide emissions from fossil fuel-fired electric  
 3030 generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d). In such section of the Plan,  
 3031 the Division shall address policy options for establishing separate standards of performance pursuant to §  
 3032 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d), for carbon dioxide emissions from existing fossil  
 3033 fuel-fired electric generating units to promote the Plan's overall goal of fuel diversity as follows:

3034 1. The Plan shall address policy options for establishing the standards of performance for existing coal-  
 3035 fired electric generating units, including the following factors:

3036 a. The most suitable system of emission reduction that (i) takes into consideration (a) the cost and benefit  
 3037 of achieving such reduction, (b) any non-air quality health and environmental impacts, and (c) the energy  
 3038 requirements of the Commonwealth and (ii) has been adequately demonstrated for coal-fired electric  
 3039 generating units that are subject to the standard of performance;

3040 b. Reductions in emissions of carbon dioxide that can be achieved through measures reasonably  
 3041 undertaken at each coal-fired electric generating unit; and

3042 c. Increased efficiencies and other measures that can be implemented at each coal-fired electric generating  
 3043 unit to reduce carbon dioxide emissions from the unit without converting from coal to other fuels, co-firing  
 3044 other fuels with coal, or limiting the utilization of the unit.

3045 2. The Plan shall also address policy options for establishing the standards of performance for existing  
 3046 gas-fired electric generating units, including the following factors:

3047 a. The application of the criteria specified in subdivisions 1 a and b to natural gas-fired electric generating  
 3048 units instead of to coal-fired electric generating units; and

3049 b. Increased efficiencies and other measures that can be reasonably implemented at the unit to reduce  
 3050 carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or  
 3051 limiting the utilization of the unit.

3052 3. The Plan shall examine policy options for state regulatory action to adopt less stringent standards or  
 3053 longer compliance schedules than those provided for in applicable federal rules or guidelines based on  
 3054 analysis of the following:

3055 a. Consumer impacts, including any disproportionate impacts of energy price increases on lower-income  
 3056 populations;

3057 b. Unreasonable cost of reducing emissions resulting from plant age, location, or basic process design;

3058 c. Physical difficulties with or impossibility of implementing emission reduction measures;

3059 d. The absolute cost of applying the performance standard to the unit;

3060 e. The expected remaining useful life of the unit;

3061 f. The economic impacts of closing the unit, including expected job losses, if the unit is unable to comply

3062 with the performance standard; and

3063 g. Any other factors specific to the unit that make application of a less stringent standard or longer  
3064 compliance schedule more reasonable.

3065 4. The Plan shall identify options, to the maximum extent permissible, for any federally required  
3066 regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units and regulatory  
3067 mechanisms that provide flexibility in complying with such standards, including the averaging of emissions,  
3068 emissions trading, or other alternative implementation measures that are determined to further the interests of  
3069 the Commonwealth and its citizens.

3070 **§ 46.2-1176. Definitions.**

3071 The following words and phrases when used in this article shall have the following meanings except  
3072 where, unless the context clearly indicates otherwise, requires a different meaning:

3073 "Basic, test and repair program" means a motor vehicle emissions inspection system established by  
3074 regulations of the Board which shall designate the use of an OBD-II (on-board diagnostic system) with  
3075 wireless capability, and a two-speed idle analyzer as the only authorized testing equipment. Only those  
3076 computer software programs and emissions testing procedures necessary to comply with the applicable  
3077 provisions of Title I of the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, shall be included. Such testing  
3078 equipment shall be approvable for motor vehicle manufacturers' warranty repairs.

3079 "Board" means the ~~State Air Pollution Control~~ Board of Environmental Resources.

3080 "Certificate of emissions inspection" means a document, device, or symbol, prescribed by the Director  
3081 and issued pursuant to this article, which indicates that (i) a motor vehicle has satisfactorily complied with the  
3082 emissions standards and passed the emissions inspection provided for in this article; (ii) the requirement of  
3083 compliance with such emissions standards has been waived; or (iii) the motor vehicle has failed such  
3084 emissions inspection.

3085 "Director" means the Director of the Department of Environmental Quality.

3086 "Emissions inspection station" means any facility or portion of a facility that has obtained an emissions  
3087 inspection station permit from the Director authorizing the facility to perform emissions inspections in  
3088 accordance with this article.

3089 "Enhanced emissions inspection program" means a motor vehicle emissions inspection system established  
3090 by regulations of the Board that shall designate, as the only authorized testing equipment for emissions  
3091 inspection stations, (i) the use of the ASM 50-15 (acceleration simulation mode or method) together with an  
3092 OBD-II (on-board diagnostic system) with wireless capability, (ii) the use of the ASM 50-15 together with  
3093 the use of a dynamometer, and (iii) two-speed tailpipe testing equipment. Possession and availability of a  
3094 dynamometer shall be required for enhanced emissions inspection stations. Only those computer software  
3095 programs and emissions testing procedures necessary to comply with applicable provisions of Title I of the  
3096 federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, shall be included. Such testing equipment shall be approvable  
3097 for motor vehicle manufacturers' warranty repairs. An enhanced emissions inspection program shall include  
3098 remote sensing and an on-road clean screen program as provided in this article.

3099 "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a  
3100 qualified fleet owner or lessee as determined by the Director.

3101 "Motor vehicle" means any vehicle that:

- 3102 1. Is designed for the transportation of persons or property; and
- 3103 2. Is powered by an internal combustion engine.

3104 "On-road clean screen program" means a program that allows a motor vehicle owner to voluntarily certify  
3105 compliance with emissions standards by means of on-road remote sensing.

3106 "On-road emissions inspector" means the entity or entities authorized by the Department of  
3107 Environmental Quality to perform on-road testing, including on-road testing in accordance with the on-road  
3108 clean screen program.

3109 "On-road testing" means tests of motor vehicle emissions or emissions control devices by means of  
3110 roadside pullovers or remote sensing devices.

3111 "Program coordinator" means any person or corporation that has entered into a contract with the Director  
3112 to provide services in accordance with this article.

3113 "Qualified hybrid motor vehicle" means a motor vehicle that (i) meets or exceeds all applicable regulatory  
3114 requirements, (ii) meets or exceeds the applicable federal motor vehicle emissions standards for gasoline-  
3115 powered passenger cars, and (iii) can draw propulsion energy both from gasoline or diesel fuel and a  
3116 rechargeable energy storage system.

3117 "Referee station" means an inspection facility operated or used by the Department of Environmental  
3118 Quality (i) to determine program effectiveness, (ii) to resolve emissions inspection conflicts between motor  
3119 vehicle owners and emissions inspection stations, and (iii) to provide such other technical support and  
3120 information, as appropriate, to emissions inspection stations and vehicle owners.

3121 "Remote sensing" means the measurement of motor vehicle emissions through electronic or light-sensing  
3122 equipment from a remote location such as the roadside. Remote sensing equipment may include devices to

3123 detect and record the vehicle's registration or other identification numbers.

3124 "Test and repair" means motor vehicle emissions inspection facilities that perform official motor vehicle  
 3125 emissions inspections and may also perform vehicle repairs. No regulation of the Board pertaining to test and  
 3126 repair shall bar inspection facilities from also performing vehicle repairs. Emissions inspections and vehicle  
 3127 safety inspections may be performed in the same service bay, provided that the facility is both an emissions  
 3128 inspection station and an official safety inspection station pursuant to §§ 46.2-1163 and 46.2-1166. Emissions  
 3129 inspections may be performed in any service bay of the emissions inspection station or, if by wireless means,  
 3130 in any other area on the premises of the emissions inspection station.

3131 "Validation program" or "program validation" means a program approved by the Director by which  
 3132 vehicles are randomly identified and provided a free emissions inspection for the purpose of monitoring the  
 3133 effectiveness of the emissions inspection program. A "validation program" may be conducted at an emissions  
 3134 inspection station, as defined by § 46.2-1176, in conjunction with a state safety inspection or using on-road  
 3135 testing.

3136 **§ 46.2-1179.1. Board to adopt clean alternative fuel fleet standards for motor vehicles; penalty.**

3137 A. For purposes of this section:

3138 "Clean alternative fuel" means any fuel, including methanol, ethanol, other alcohols, reformulated  
 3139 gasoline, diesel, natural gases, liquefied petroleum gas, hydrogen, and electricity or other power source used  
 3140 in a clean fuel vehicle that complies with the standards applicable to such vehicle under the federal Clean Air  
 3141 Act, 42 U.S.C. § 7401 *et seq.*, when using such fuel or other power source. In the case of a flexible fuel  
 3142 vehicle or dual fuel vehicle, "clean alternative fuel" means only a fuel for which the vehicle was certified  
 3143 when operating on clean alternative fuel.

3144 "Fleet" means any centrally fueled fleet of ~~ten~~ 10 or more motor vehicles owned or operated by a single  
 3145 entity. "Fleet" does not include motor vehicles held for lease or rental to the general public, motor vehicles  
 3146 held for sale by motor vehicle dealers, motor vehicles used for manufacturer product tests, law-enforcement  
 3147 and other emergency vehicles, or nonroad vehicles, including farm and construction vehicles.

3148 B. The Board may adopt by regulation motor vehicle clean alternative fuel fleet standards consistent with  
 3149 the provisions of Part C of Title II of the federal Clean Air Act for model years beginning with the model  
 3150 year 1998 or the first succeeding model year for which adoption of such standards is practicable. If adoption  
 3151 and implementation by the Board of an equivalent air pollution reduction program is approved by the federal  
 3152 Environmental Protection Agency, the regulation and program authorized by this section shall not become  
 3153 effective. Such regulations shall contain the minimum phase-in schedule contained in § 246 (b) of Part C of  
 3154 Title II of the Clean Air Act. However, nothing in this section shall preclude affected fleet owners from  
 3155 exceeding the minimum requirements of the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.* Beginning in  
 3156 1995 and upon adoption of the standards by the Board, the Board shall require the fleet owned by the federal  
 3157 government to meet the clean alternative fuel fleet standard and phase-in schedule established by the Board.  
 3158 If necessary to meet the Board's standards and phase-in schedule, the Board shall require fleets owned by the  
 3159 federal government to convert a portion of existing fleet vehicles to the use of clean alternative fuels as  
 3160 defined by the federal Clean Air Act. The standards specified in this subsection shall apply only to (i) motor  
 3161 vehicles registered in localities designated by the federal Environmental Protection Agency, pursuant to the  
 3162 federal Clean Air Act, as serious, severe, or extreme air quality nonattainment areas, or as maintenance areas  
 3163 formerly designated serious, severe, or extreme and (ii) motor vehicles not registered in the above-mentioned  
 3164 localities, but having either (a) a base of operations or (b) a majority of their annual travel in one or more of  
 3165 those localities.

3166 C. An owner of a covered fleet shall not use any motor vehicle or motor vehicle engine which is  
 3167 manufactured during or after the first model year to which the standards specified in subsection A of this  
 3168 section are applicable, if such vehicle or engine is registered or has its base of operations in the localities  
 3169 specified in subsection B of this section and has not been certified in accordance with regulations  
 3170 promulgated by the Board. The Board may promulgate regulations providing for reasonable exemptions  
 3171 consistent with the provisions of Part C of Title II of the federal Clean Air Act. Motor vehicles exempted  
 3172 from the provisions of this section shall forever be exempt.

3173 D. Any person that violates the requirements of this section or any regulation adopted hereunder shall be  
 3174 subject to the penalties in §§ 46.2-1187 and 46.2-1187.2. Each day of violation shall be a separate offense,  
 3175 and each motor vehicle shall be treated separately in assessing violations.

3176 E. In order to limit adverse economic and administrative impacts on covered fleets operating both in  
 3177 Virginia and in neighboring states, the Department of Environmental Quality shall, to the maximum extent  
 3178 practicable, coordinate the provisions of its regulations promulgated under this section with neighboring  
 3179 states' statutes and regulations relating to use of clean alternative fuels by motor vehicle fleets.

3180 F. The State Corporation Commission, as to matters within its jurisdiction, and the Department of  
 3181 Environmental Quality, as to other matters, may, should they deem such action necessary, promulgate  
 3182 regulations necessary or convenient to ensure the availability of clean alternative fuels to operators of fleets  
 3183 covered by the provisions of this section. The ~~State Air Pollution Control~~ Board may delegate to the

3184 Commissioner of Agriculture its authority under the Air Pollution Control Law of Virginia, Chapter 13 (§  
3185 10.1-1300 et seq.) of Title 10.1, to implement and enforce any provisions of its regulations covering the  
3186 availability of clean alternative fuels. Upon receiving such delegation, the authority to implement and enforce  
3187 the regulations under the Air Pollution Control Law of Virginia shall be vested solely in the Commissioner,  
3188 notwithstanding any provision of law contained in Title 10.1, except as provided in this section. The State Air  
3189 Pollution Control Board, in delegating its authority under this section, may make the delegation subject to  
3190 any conditions it deems appropriate to ensure effective implementation of the regulations according to the  
3191 policies of the State Air Pollution Control Board.

3192 **§ 46.2-1304.1. Localities may regulate construction and parking of commercial motor vehicles used**  
3193 **to transport municipal solid waste; penalty.**

3194 The governing body of any county, city, or town may by ordinance provide that:

3195 1. No commercial motor vehicle used to transport municipal solid waste shall be parked anywhere within  
3196 the county, city, or town, except at locations zoned or otherwise authorized for such use by applicable  
3197 ordinance, special exception, or variance;

3198 2. Any such commercial motor vehicle found parked at a nonauthorized location may be towed or  
3199 removed from that location as provided in § 46.2-1231; and

3200 3. The cargo compartment of every commercial motor vehicle that is used to transport municipal solid  
3201 waste shall be so constructed so as to prevent the escape of municipal solid waste therefrom. Such ordinances  
3202 shall exclude from their provisions vehicles owned or operated by persons transporting municipal solid waste  
3203 from their residences to a permitted transfer or disposal facility.

3204 No such ordinance shall impose, for any violation of any of its provisions, a penalty greater than provided  
3205 for a traffic infraction as provided in § 46.2-113. Any such penalty shall be in addition to any vehicle towing  
3206 and storage charges.

3207 For the purposes of this section, "municipal solid waste" shall have the meaning prescribed by the  
3208 Virginia Waste Management Board of *Environmental Resources* by regulation (9VAC20-80-10).

3209 For the purposes of this section and local ordinances adopted under this section, "commercial motor  
3210 vehicle" shall have the meaning prescribed in § 46.2-341.4.

3211 **§ 54.1-505. Qualification for an asbestos contractor's license.**

3212 To qualify for an asbestos contractor's license, an applicant shall:

3213 1. Except as provided in § 54.1-504, ensure that each of his employees or agents who will come into  
3214 contact with asbestos or who will be responsible for an asbestos project is licensed as an asbestos supervisor  
3215 or worker; and

3216 2. Demonstrate to the satisfaction of the Board that the applicant and his employees or agents are familiar  
3217 with and are capable of complying fully with all applicable requirements, procedures and standards of the  
3218 United States U.S. Environmental Protection Agency, the United States U.S. Occupational Safety and Health  
3219 Administration, the Department of Labor and Industry, and the State Air Pollution Control Board of  
3220 *Environmental Resources* covering any part of an asbestos project.

3221 **§ 54.1-2300. Definitions.**

3222 As used in this chapter, unless the context requires a different meaning:

3223 "Board" means the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System  
3224 Professionals.

3225 "Onsite sewage system" means a conventional onsite sewage system or alternative onsite sewage system  
3226 as defined in § 32.1-163.

3227 "Operator" means any individual employed or appointed by any owner, and who is designated by such  
3228 owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge,  
3229 and whose duties include testing or evaluation to control waterworks or wastewater works operations or to  
3230 operate and maintain onsite sewage systems. Not included in this definition are superintendents or directors  
3231 of public works, city engineers, or other municipal or industrial officials whose duties do not include the  
3232 actual operation or direct supervision of waterworks or wastewater works.

3233 "Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private  
3234 institution, corporation, association, firm or company organized or existing under the laws of this  
3235 Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a  
3236 group, who own, manage, or maintain waterworks or wastewater works.

3237 "Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an  
3238 association or other similar legal entity engaged in operating waterworks or wastewater works.

3239 "Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving more  
3240 than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works serving fewer  
3241 than 400 persons, as set forth in § 62.1-44.18, if so certified by the State Water Control Board of  
3242 *Environmental Resources*; and (iii) facilities for discharge to state waters of industrial wastes or other wastes,  
3243 if certified by the State Water Control Board of *Environmental Resources*.

3244 "Waterworks" means each system of structures and appliances used in connection with the collection,

3245 storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the  
 3246 public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a  
 3247 waterworks unless certified by the Board to be such.

3248 **§ 54.1-2301. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System**  
 3249 **Professionals; membership; terms; duties.**

3250 A. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals  
 3251 shall consist of 11 members as follows: the Director of the Office of Water Programs of the State Department  
 3252 of Health, or his designee, the Executive Director of the ~~State Water Control~~ *Board of Environmental*  
 3253 *Resources*, or his designee, a currently employed waterworks operator having a valid license of the highest  
 3254 classification issued by the Board, a currently employed wastewater works operator having a valid license of  
 3255 the highest classification issued by the Board, a local or regional representative of the Department of Health,  
 3256 a representative of an owner of a waterworks, a representative of an owner of a wastewater works, a licensed  
 3257 alternative onsite sewage system operator, a licensed alternative onsite sewage system installer, a licensed  
 3258 onsite soil evaluator, and one nonlegislative citizen member. The alternative onsite sewage system operator,  
 3259 alternative onsite sewage system installer, and onsite soil evaluator shall have practiced for at least five  
 3260 consecutive years immediately prior to appointment. No owner shall be represented on the Board by more  
 3261 than one representative or employee operator. The term of Board members shall be four years *except for*  
 3262 *members serving ex officio who shall serve terms coincident with their terms of office.*

3263 B. 1. The Board shall examine waterworks and wastewater works operators and issue licenses. The  
 3264 licenses may be issued in specific operator classifications to attest to the competency of an operator to  
 3265 supervise and operate waterworks and wastewater works while protecting the public health, welfare, and  
 3266 property and conserving and protecting the water resources of the Commonwealth.

3267 2. The Board shall, upon application by an individual, and without examination pursuant to subdivision 1,  
 3268 recognize licenses or certificates issued by another state as fulfillment of qualifications for licensure in the  
 3269 Commonwealth if the following conditions are met:

3270 a. The individual holds a current and valid professional or occupational license or government  
 3271 certification in another state in a profession or occupation with a similar scope of practice, as determined by  
 3272 the Board;

3273 b. The individual has held the professional or occupational license or government certification in the other  
 3274 state for at least three years;

3275 c. The other state or state of original licensure required the individual to pass an examination and to meet  
 3276 certain standards related to education, training, or experience;

3277 d. There are no pending investigations or unresolved complaints against the individual, and the other state  
 3278 holds the individual in good standing;

3279 e. The individual does not have a disqualifying criminal record as determined by the Board in accordance  
 3280 with § 54.1-204;

3281 f. No other state has imposed discipline on the licensee, except for discipline involving only a financial  
 3282 penalty and no harm to the health or economic well-being of the public; and

3283 g. The individual pays all applicable fees.

3284 3. For the purposes of this subsection, "other state" or "another state" means any state, territory,  
 3285 possession, or jurisdiction of the United States.

3286 C. The Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage  
 3287 system installers, and onsite sewage system operators.

3288 D. The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i)  
 3289 onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii)  
 3290 operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include  
 3291 requirements for (a) minimum education and training, including approved training courses; (b) relevant work  
 3292 experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program,  
 3293 renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be  
 3294 restricted to the design of conventional onsite sewage systems; and (f) other criteria the Board deems  
 3295 necessary.

3296 E. The Board shall permit any wastewater works operator to sit for the conventional onsite sewage system  
 3297 operator examination.

3298 **§ 55.1-2417. Escheat of property with hazardous materials.**

3299 In addition to any other remedy provided by law, the ~~Virginia Waste Management~~ *Board of*  
 3300 *Environmental Resources*, pursuant to its authority granted in § 10.1-1402, or the Department of  
 3301 Environmental Quality, shall have recourse against any prior owner or the estate of any prior owner for the  
 3302 costs of cleanup of escheated property in or upon which any hazardous material as defined in § 44-146.34 is  
 3303 found.

3304 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire.**

3305 A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing,

3306 initiate proceedings to review the rates, terms, and conditions for the provision of generation, distribution,  
3307 and transmission services of each investor-owned incumbent electric utility. Such proceedings shall be  
3308 governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such proceedings  
3309 the Commission shall determine fair rates of return on common equity applicable to the generation and  
3310 distribution services of the utility. In so doing, the Commission may use any methodology to determine such  
3311 return it finds consistent with the public interest, but such return shall not be set lower than the average of the  
3312 returns on common equity reported to the Securities and Exchange Commission for the three most recent  
3313 annual periods for which such data are available by not less than a majority, selected by the Commission as  
3314 specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall  
3315 the Commission set such return more than 300 basis points higher than such average. The peer group of the  
3316 utility shall be determined in the manner prescribed in subdivision 2 b. The Commission may increase or  
3317 decrease such combined rate of return by up to 100 basis points based on the generating plant performance,  
3318 customer service, and operating efficiency of a utility, as compared to nationally recognized standards  
3319 determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission  
3320 shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that  
3321 the utility's combined rate of return on common equity is more than 50 basis points below the combined rate  
3322 of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide  
3323 the opportunity to fully recover the costs of providing the utility's services and to earn not less than such  
3324 combined rate of return. If the Commission finds that the utility's combined rate of return on common equity  
3325 is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either  
3326 (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order  
3327 such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully  
3328 recover its costs of providing its services and to earn not less than the fair rates of return on common equity  
3329 applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the  
3330 utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year  
3331 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12  
3332 months, as determined at the discretion of the Commission, following the effective date of the Commission's  
3333 order and be allocated among customer classes such that the relationship between the specific customer class  
3334 rates of return to the overall target rate of return will have the same relationship as the last approved  
3335 allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and  
3336 opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the provision of  
3337 generation, distribution and transmission services by each investor-owned incumbent electric utility, subject  
3338 to the following provisions:

3339 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and  
3340 such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-585.1:1,  
3341 the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive 12-month  
3342 test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for a Phase I  
3343 Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-month test  
3344 periods ending December 31 immediately preceding the year in which such review proceeding is conducted.  
3345 Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase II Utility in  
3346 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and ending December  
3347 31, 2020, with subsequent reviews on a biennial basis commencing in 2023, with such proceedings utilizing  
3348 the two successive 12-month test periods ending December 31 immediately preceding the year in which such  
3349 review proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned  
3350 incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the  
3351 Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an investor-  
3352 owned incumbent electric utility that was bound by such a settlement.

3353 2. Subject to the provisions of subdivision 6, the fair rate of return on common equity applicable  
3354 separately to the generation and distribution services of such utility, and for the two such services combined,  
3355 and for any rate adjustment clauses approved under subdivision 5 or 6, shall be determined by the  
3356 Commission during each such review, as follows:

3357 a. The Commission may use any methodology to determine such return it finds consistent with the public  
3358 interest. However, for a Phase I Utility, for applications received by the Commission on or after January 1,  
3359 2020, such return shall not be set lower than the average of either (i) the returns on common equity reported  
3360 to the Securities and Exchange Commission for the three most recent annual periods for which such data are  
3361 available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other  
3362 investor-owned electric utilities in the peer group of the utility subject to such triennial review or (ii) the  
3363 authorized returns on common equity that are set by the applicable regulatory commissions for the same  
3364 selected peer group, nor shall the Commission set such return more than 150 basis points higher than such  
3365 average.

3366 b. For a Phase I Utility, in selecting such majority of peer group investor-owned electric utilities for

3367 applications received by the Commission on or after January 1, 2020, the Commission shall first remove from  
3368 such group the two utilities within such group that have the lowest reported or authorized, as applicable,  
3369 returns of the group, as well as the two utilities within such group that have the highest reported or  
3370 authorized, as applicable, returns of the group, and the Commission shall then select a majority of the utilities  
3371 remaining in such peer group. In its final order regarding such triennial review, the Commission shall identify  
3372 the utilities in such peer group it selected for the calculation of such limitation. With respect to a Phase I  
3373 Utility, for purposes of this subdivision 2, an investor-owned electric utility shall be deemed part of such peer  
3374 group if (i) its principal operations are conducted in the southeastern United States east of the Mississippi  
3375 River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state  
3376 of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission, and  
3377 distribution services whose facilities and operations are subject to state public utility regulation in the state  
3378 where its principal operations are conducted, (iii) it had a long-term bond rating assigned by Moody's  
3379 Investors Service of at least Baa at the end of the most recent test period subject to such review, and (iv) it is  
3380 not an affiliate of the utility subject to such review or a utility whose fair rate of return on common equity is  
3381 determined by the Commission.

3382 c. The Commission may increase or decrease the utility's combined rate of return for generation and  
3383 distribution services by up to 50 basis points based on factors that may include reliability, generating plant  
3384 performance, customer service, and operating efficiency of a utility. Any such adjustment to the combined  
3385 rate of return for generation and distribution services shall include consideration of nationally recognized  
3386 standards determined by the Commission to be appropriate for such purposes.

3387 d. In any Current Proceeding, the Commission shall determine whether the Current Return has increased,  
3388 on a percentage basis, above the Initial Return by more than the increase, expressed as a percentage, in the  
3389 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the  
3390 Bureau of Labor Statistics of the ~~United States~~ U.S. Department of Labor, since the date on which the  
3391 Commission determined the Initial Return. If so, the Commission may conduct an additional analysis of  
3392 whether it is in the public interest to utilize such Current Return for the Current Proceeding then pending. A  
3393 finding of whether the Current Return justifies such additional analysis shall be made without regard to any  
3394 enhanced rate of return on common equity awarded pursuant to the provisions of subdivision 6. Such  
3395 additional analysis shall include, but not be limited to, a consideration of overall economic conditions, the  
3396 level of interest rates and cost of capital with respect to business and industry, in general, as well as electric  
3397 utilities, the current level of inflation and the utility's cost of goods and services, the effect on the utility's  
3398 ability to provide adequate service and to attract capital if less than the Current Return were utilized for the  
3399 Current Proceeding then pending, and such other factors as the Commission may deem relevant. If, as a result  
3400 of such analysis, the Commission finds that use of the Current Return for the Current Proceeding then  
3401 pending would not be in the public interest, then the lower limit imposed by subdivision 2 a on the return to  
3402 be determined by the Commission for such utility shall be calculated, for that Current Proceeding only, by  
3403 increasing the Initial Return by a percentage at least equal to the increase, expressed as a percentage, in the  
3404 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the  
3405 Bureau of Labor Statistics of the ~~United States~~ U.S. Department of Labor, since the date on which the  
3406 Commission determined the Initial Return. For purposes of this subdivision:

3407 "Current Proceeding" means any proceeding conducted under any provisions of this subsection that  
3408 require or authorize the Commission to determine a fair combined rate of return on common equity for a  
3409 utility and that will be concluded after the date on which the Commission determined the Initial Return for  
3410 such utility.

3411 "Current Return" means the minimum fair combined rate of return on common equity required for any  
3412 Current Proceeding by the limitation regarding a utility's peer group specified in subdivision 2 a.

3413 "Initial Return" means the fair combined rate of return on common equity determined for such utility by  
3414 the Commission on the first occasion after July 1, 2009, under any provision of this subsection pursuant to  
3415 the provisions of subdivision 2 a.

3416 e. In addition to other considerations, in setting the return on equity within the range allowed by this  
3417 section, the Commission shall strive to maintain costs of retail electric energy that are cost competitive with  
3418 costs of retail electric energy provided by the other peer group investor-owned electric utilities.

3419 f. The determination of such returns shall be made by the Commission on a stand-alone basis, and  
3420 specifically without regard to any return on common equity or other matters determined with regard to  
3421 facilities described in subdivision 6.

3422 g. If the combined rate of return on common equity earned by the generation and distribution services is  
3423 no more than 50 basis points above or below the return as so determined or, for any test period commencing  
3424 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, such return  
3425 is no more than 70 basis points above or below the return as so determined, such combined return shall not be  
3426 considered either excessive or insufficient, respectively. However, for any test period commencing after  
3427 December 31, 2012, for a Phase II Utility, and after December 31, 2013, for a Phase I Utility, if the utility



3428 has, during the test period or periods under review, earned below the return as so determined, whether or not  
 3429 such combined return is within 70 basis points of the return as so determined, the utility may petition the  
 3430 Commission for approval of an increase in rates in accordance with the provisions of subdivision 8 a as if it  
 3431 had earned more than 70 basis points below a fair combined rate of return, and such proceeding shall  
 3432 otherwise be conducted in accordance with the provisions of this section. The provisions of this subdivision  
 3433 are subject to the provisions of subdivision 8.

3434 h. Any amount of a utility's earnings directed by the Commission to be credited to customers' bills  
 3435 pursuant to this section shall not be considered for the purpose of determining the utility's earnings in any  
 3436 subsequent review.

3437 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings  
 3438 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021 and  
 3439 terminating thereafter. Such filing shall encompass the three successive 12-month test periods ending  
 3440 December 31 immediately preceding the year in which such proceeding is conducted, except that the filing  
 3441 for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31,  
 3442 2020. After 2021, each Phase II Utility shall make a biennial filing by March 31 of every second year, except  
 3443 that the 2023 filing for a Phase II Utility shall be made on or after July 1, 2023. All biennial filings shall  
 3444 encompass the two successive 12-month test periods ending December 31 immediately preceding the year in  
 3445 which such review proceeding is conducted. All such filings shall consist of the schedules contained in the  
 3446 Commission's rules governing utility rate increase applications, and in every such case the filing for each year  
 3447 shall be identified separately and shall be segregated from any other year encompassed by the filing. In a  
 3448 filing under this subdivision that does not result in an overall rate change, a utility may propose an adjustment  
 3449 to one or more tariffs that are revenue neutral to the utility.

3450 If the Commission determines that rates should be revised or credits be applied to customers' bills  
 3451 pursuant to subdivision 8 or 10, any rate adjustment clauses previously implemented related to facilities  
 3452 utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's  
 3453 costs, revenues, and investments until the amounts that are the subject of such rate adjustment clauses are  
 3454 fully recovered. The Commission shall combine such clauses with the utility's costs, revenues, and  
 3455 investments only after it makes its initial determination with regard to necessary rate revisions or credits to  
 3456 customers' bills, and the amounts thereof, but after such clauses are combined as specified in this paragraph,  
 3457 they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of  
 3458 future review proceedings.

3459 As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously  
 3460 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,  
 3461 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues, and  
 3462 investments for generation and distribution services. After such rate adjustment clauses are combined as  
 3463 specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,  
 3464 revenues, and investments for the purposes of future biennial review proceedings, and the combination of  
 3465 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023  
 3466 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination shall  
 3467 not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution services in its  
 3468 2023 biennial proceeding.

3469 4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for  
 3470 transmission services provided to the utility by the regional transmission entity of which the utility is a  
 3471 member, as determined under applicable rates, terms and conditions approved by the Federal Energy  
 3472 Regulatory Commission; (ii) costs charged to the utility that are associated with demand response programs  
 3473 approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity  
 3474 of which the utility is a member; and (iii) costs incurred by the utility to construct, operate, and maintain  
 3475 transmission lines and substations installed in order to provide service to a business park. Upon petition of a  
 3476 utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month  
 3477 period, the Commission shall approve a rate adjustment clause under which such costs, including, without  
 3478 limitation, costs for transmission service; charges for new and existing transmission facilities, including costs  
 3479 incurred by the utility to construct, operate, and maintain transmission lines and substations installed in order  
 3480 to provide service to a business park; administrative charges; and ancillary service charges designed to  
 3481 recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to  
 3482 recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

3483 5. A utility may at any time, after the expiration or termination of capped rates, but not more than once in  
 3484 any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the  
 3485 timely and current recovery from customers of the following costs:

3486 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1, 2004,  
 3487 and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring such costs  
 3488 consistent with an order of the Commission entered under clause (vi) of subsection B of § 56-582. The

3489 Commission shall approve such a petition allowing the recovery of such costs that comply with the  
3490 requirements of clause (vi) of subsection B of § 56-582;

3491 b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs  
3492 or pilot programs. The Commission shall approve such a petition if it finds that the program is in the public  
3493 interest, provided that the Commission shall allow the recovery of such costs as it finds are reasonable;

3494 c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs  
3495 or pilot programs. Any such petition shall include a proposed budget for the design, implementation, and  
3496 operation of the energy efficiency program, including anticipated savings from and spending on each  
3497 program, and the Commission shall grant a final order on such petitions within eight months of initial filing.  
3498 The Commission shall only approve such a petition if it finds that the program is in the public interest. If the  
3499 Commission determines that an energy efficiency program or portfolio of programs is not in the public  
3500 interest, its final order shall include all work product and analysis conducted by the Commission's staff in  
3501 relation to that program that has bearing upon the Commission's determination. Such order shall adhere to  
3502 existing protocols for extraordinarily sensitive information.

3503 Energy efficiency pilot programs are in the public interest provided that the pilot program is (i) of limited  
3504 scope, cost, and duration and (ii) intended to determine whether a new or substantially revised program  
3505 would be cost-effective.

3506 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses for  
3507 energy efficiency programs and pilot programs, which margin shall be equal to the general rate of return on  
3508 common equity determined as described in subdivision 2. Beginning January 1, 2022, and thereafter, if the  
3509 Commission determines that the utility meets in any year the annual energy efficiency standards set forth in §  
3510 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program  
3511 operating expenses in that year, to be recovered through a rate adjustment clause, which margin shall be equal  
3512 to the general rate of return on common equity determined as described in subdivision 2. If the Commission  
3513 does not approve energy efficiency programs that, in the aggregate, can achieve the annual energy efficiency  
3514 standards, the Commission shall award a margin on energy efficiency operating expenses in that year for any  
3515 programs the Commission has approved, to be recovered through a rate adjustment clause under this  
3516 subdivision, which margin shall equal the general rate of return on common equity determined as described in  
3517 subdivision 2. Any margin awarded pursuant to this subdivision shall be applied as part of the utility's next  
3518 rate adjustment clause true-up proceeding. The Commission shall also award an additional 20 basis points for  
3519 each additional incremental 0.1 percent in annual savings in any year achieved by the utility's energy  
3520 efficiency programs approved by the Commission pursuant to this subdivision, beyond the annual  
3521 requirements set forth in § 56-596.2, provided that the total performance incentive awarded in any year shall  
3522 not exceed 10 percent of that utility's total energy efficiency program spending in that same year.

3523 The Commission shall annually monitor and report to the General Assembly the performance of all  
3524 programs approved pursuant to this subdivision, including each utility's compliance with the total annual  
3525 savings required by § 56-596.2, as well as the annual and lifecycle net and gross energy and capacity savings,  
3526 related emissions reductions, and other quantifiable benefits of each program; total customer bill savings that  
3527 the programs produce; utility spending on each program, including any associated administrative costs; and  
3528 each utility's avoided costs and cost-effectiveness results.

3529 Notwithstanding any other provision of law, unless the Commission finds in its discretion and after  
3530 consideration of all in-state and regional transmission entity resources that there is a threat to the reliability or  
3531 security of electric service to the utility's customers, the Commission shall not approve construction of any  
3532 new utility-owned generating facilities that emit carbon dioxide as a by-product of combusting fuel to  
3533 generate electricity unless the utility has already met the energy savings goals identified in § 56-596.2 and the  
3534 Commission finds that supply-side resources are more cost-effective than demand-side or energy storage  
3535 resources.

3536 As used in this subdivision, "large general service customer" means a customer that has a verifiable  
3537 history of having used more than one megawatt of demand from a single site.

3538 Large general service customers shall be exempt from requirements that they participate in energy  
3539 efficiency programs if the Commission finds that the large general service customer has, at the customer's  
3540 own expense, implemented energy efficiency programs that have produced or will produce measured and  
3541 verified results consistent with industry standards and other regulatory criteria stated in this section. The  
3542 Commission shall, no later than June 30, 2021, adopt rules or regulations (a) establishing the process for large  
3543 general service customers to apply for such an exemption, (b) establishing the administrative procedures by  
3544 which eligible customers will notify the utility, and (c) defining the standard criteria that shall be satisfied by  
3545 an applicant in order to notify the utility, including means of evaluation measurement and verification and  
3546 confidentiality requirements. At a minimum, such rules and regulations shall require that each exempted large  
3547 general service customer certify to the utility and Commission that its implemented energy efficiency  
3548 programs have delivered measured and verified savings within the prior five years. In adopting such rules or  
3549 regulations, the Commission shall also specify the timing as to when a utility shall accept and act on such

3550 notice, taking into consideration the utility's integrated resource planning process, as well as its  
3551 administration of energy efficiency programs that are approved for cost recovery by the Commission. Savings  
3552 from large general service customers shall be accounted for in utility reporting in the standards in § 56-596.2.

3553 The notice of nonparticipation by a large general service customer shall be for the duration of the service  
3554 life of the customer's energy efficiency measures. The Commission may on its own motion initiate steps  
3555 necessary to verify such nonparticipant's achievement of energy efficiency if the Commission has a body of  
3556 evidence that the nonparticipant has knowingly misrepresented its energy efficiency achievement.

3557 A utility shall not charge such large general service customer for the costs of installing energy efficiency  
3558 equipment beyond what is required to provide electric service and meter such service on the customer's  
3559 premises if the customer provides, at the customer's expense, equivalent energy efficiency equipment. In all  
3560 relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of  
3561 economic development, energy efficiency and environmental protection in the Commonwealth;

3562 d. Projected and actual costs of compliance with renewable energy portfolio standard requirements  
3563 pursuant to § 56-585.5 that are not recoverable under subdivision 6. The Commission shall approve such a  
3564 petition allowing the recovery of such costs incurred as required by § 56-585.5, provided that the  
3565 Commission does not otherwise find such costs were unreasonably or imprudently incurred;

3566 e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate impacts to  
3567 marine life caused by construction of offshore wind generating facilities, as described in § 56-585.1:11, or to  
3568 comply with state or federal environmental laws or regulations applicable to generation facilities used to  
3569 serve the utility's native load obligations, including the costs of allowances purchased through a market-based  
3570 trading program for carbon dioxide emissions. The Commission shall approve such a petition if it finds that  
3571 such costs are necessary to comply with such environmental laws or regulations;

3572 f. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate  
3573 programs approved by the Commission that accelerate the vegetation management of distribution rights-of-  
3574 way. No costs shall be allocated to or recovered from customers that are served within the large general  
3575 service rate classes for a Phase II Utility or that are served at subtransmission or transmission voltage, or take  
3576 delivery at a substation served from subtransmission or transmission voltage, for a Phase I Utility; and

3577 g. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate  
3578 programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled  
3579 individuals or (ii) organizations providing residential services to low-income, elderly, and disabled  
3580 individuals for the installation of, or access to, equipment to generate electric energy derived from sunlight,  
3581 provided the low-income, elderly, and disabled individuals, or organizations providing residential services to  
3582 low-income, elderly, and disabled individuals, first participate in incentive programs for the installation of  
3583 measures that reduce heating or cooling costs.

3584 Any rate adjustment clause approved under subdivision 5 c by the Commission shall remain in effect until  
3585 the utility exhausts the approved budget for the energy efficiency program. The Commission shall have the  
3586 authority to determine the duration or amortization period for any other rate adjustment clause approved  
3587 under this subdivision.

3588 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the  
3589 utility's projected native load obligations and to promote economic development, a utility may at any time,  
3590 after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment  
3591 clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation  
3592 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in  
3593 § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii)  
3594 one or more other generation facilities, (iii) one or more major unit modifications of generation facilities,  
3595 including the costs of any system or equipment upgrade, system or equipment replacement, or other cost  
3596 reasonably appropriate to extend the combined operating license for or the operating life of one or more  
3597 generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or  
3598 more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v)  
3599 one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable  
3600 energy resources as all or a portion of their power source and such facilities and associated resources are  
3601 located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such  
3602 facility is located within or without the utility's service territory, or (vi) one or more electric distribution grid  
3603 transformation projects; however, subject to the provisions of the following sentence, the utility shall not file  
3604 a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual  
3605 incremental increase in the level of investments associated with such a petition that exceeds five percent of  
3606 such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month  
3607 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by final  
3608 order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings  
3609 regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery in such  
3610 proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery

3611 in prior proceedings under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by  
3612 a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of  
3613 overhead distribution facilities to underground facilities that have been previously approved or are pending  
3614 approval by the Commission through a petition by the utility under this subdivision. Such a petition  
3615 concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that  
3616 are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed  
3617 before the expiration or termination of capped rates. A utility that constructs or makes modifications to any  
3618 such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy  
3619 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole  
3620 or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as  
3621 accrued against income, through its rates, including projected construction work in progress, and any  
3622 associated allowance for funds used during construction, planning, development and construction or  
3623 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new  
3624 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such  
3625 projects, an enhanced rate of return on common equity calculated as specified below; however, in  
3626 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the  
3627 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation  
3628 and maintenance costs attributable to either the overhead distribution facilities being replaced or the new  
3629 underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.  
3630 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain  
3631 eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a  
3632 petition for approval to construct or purchase a facility consisting of at least one megawatt of generating  
3633 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or  
3634 services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment  
3635 clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval  
3636 to construct or purchase a generating facility that emits carbon dioxide shall demonstrate that it has already  
3637 met the energy savings goals identified in § 56-596.2 and that the identified need cannot be met more  
3638 affordably through the deployment or utilization of demand-side resources or energy storage resources and  
3639 that it has considered and weighed alternative options, including third-party market alternatives, in its  
3640 selection process.

3641 The costs of the facility, other than return on projected construction work in progress and allowance for  
3642 funds used during construction, shall not be recovered prior to the date a facility constructed by the utility and  
3643 described in clause (i), (ii), (iii), or (v) begins commercial operation, the date the utility becomes the owner of  
3644 a purchased generation facility consisting of at least one megawatt of generating capacity using energy  
3645 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole  
3646 or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the  
3647 utility as plant in service. In any application to construct a new generating facility, the utility shall include,  
3648 and the Commission shall consider, the social cost of carbon, as determined by the Commission, as a benefit  
3649 or cost, whichever is appropriate. The Commission shall ensure that the development of new, or expansion of  
3650 existing, energy resources or facilities does not have a disproportionate adverse impact on historically  
3651 economically disadvantaged communities. The Commission may adopt any rules it deems necessary to  
3652 determine the social cost of carbon and shall use the best available science and technology, including the  
3653 Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis  
3654 Under Executive Order 12866, published by the Interagency Working Group on Social Cost of Greenhouse  
3655 Gases from the United States Government in August 2016, as guidance. The Commission shall include a  
3656 system to adjust the costs established in this section with inflation.

3657 Such enhanced rate of return on common equity shall be applied to allowance for funds used during  
3658 construction and to construction work in progress during the construction phase of the facility and shall  
3659 thereafter be applied to the entire facility during the first portion of the service life of the facility. The first  
3660 portion of the service life shall be as specified in the table below; however, the Commission shall determine  
3661 the duration of the first portion of the service life of any facility, within the range specified in the table below,  
3662 which determination shall be consistent with the public interest and shall reflect the Commission's  
3663 determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the  
3664 Commonwealth and the risks involved in the development of the facility. After the first portion of the service  
3665 life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the  
3666 remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the  
3667 date a facility constructed by the utility and described in clause (i), (ii), (iii), or (v) begins commercial  
3668 operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one  
3669 megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and  
3670 that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date  
3671 new underground facilities or new electric distribution grid transformation projects are classified by the

3672 utility as plant in service, and such service life shall be deemed equal in years to the life of that facility as  
 3673 used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be  
 3674 calculated by adding the basis points specified in the table below to the utility's general rate of return, and  
 3675 such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause.  
 3676 Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's  
 3677 actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as  
 3678 determined pursuant to this subdivision, until such construction work in progress is included in rates. The  
 3679 construction of any facility described in clause (i) or (v) is in the public interest, and in determining whether  
 3680 to approve such facility, the Commission shall liberally construe the provisions of this title. The construction  
 3681 or purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity,  
 3682 and with an aggregate rated capacity that does not exceed 16,100 megawatts, including rooftop solar  
 3683 installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts,  
 3684 that use energy derived from sunlight or from onshore wind and are located in the Commonwealth or off the  
 3685 Commonwealth's Atlantic shoreline, regardless of whether any of such facilities are located within or without  
 3686 the utility's service territory, is in the public interest, and in determining whether to approve such facility, the  
 3687 Commission shall liberally construe the provisions of this title. A utility may enter into short-term or long-  
 3688 term power purchase contracts for the power derived from sunlight generated by such generation facility prior  
 3689 to purchasing the generation facility. The replacement of any subset of a utility's existing overhead  
 3690 distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-  
 3691 per-mile over a preceding 10-year period with new underground facilities in order to improve electric service  
 3692 reliability is in the public interest. In determining whether to approve petitions for rate adjustment clauses for  
 3693 such new underground facilities that meet this criteria, and in determining the level of costs to be recovered  
 3694 thereunder, the Commission shall liberally construe the provisions of this title.

3695 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local and  
 3696 system-wide benefits and to be cost beneficial, and the costs associated with such new underground facilities  
 3697 are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of subsection C or  
 3698 D, shall be approved for recovery by the Commission pursuant to this subdivision, provided that the total  
 3699 costs associated with the replacement of any subset of existing overhead distribution tap lines proposed by  
 3700 the utility with new underground facilities, exclusive of financing costs, shall not exceed an average cost per  
 3701 customer of \$20,000, with such customers, including those served directly by or downline of the tap lines  
 3702 proposed for conversion, and, further, such total costs shall not exceed an average cost per mile of tap lines  
 3703 converted, exclusive of financing costs, of \$750,000. A utility shall, without regard for whether it has  
 3704 petitioned for any rate adjustment clause pursuant to clause (vi), petition the Commission, not more than once  
 3705 annually, for approval of a plan for electric distribution grid transformation projects. Any plan for electric  
 3706 distribution grid transformation projects shall include both measures to facilitate integration of distributed  
 3707 energy resources and measures to enhance physical electric distribution grid reliability and security. In ruling  
 3708 upon such a petition, the Commission shall consider whether the utility's plan for such projects, and the  
 3709 projected costs associated therewith, are reasonable and prudent. Such petition shall be considered on a stand-  
 3710 alone basis without regard to the other costs, revenues, investments, or earnings of the utility; without regard  
 3711 to whether the costs associated with such projects will be recovered through a rate adjustment clause under  
 3712 this subdivision or through the utility's rates for generation and distribution services; and without regard to  
 3713 whether such costs will be the subject of a customer credit offset, as applicable, pursuant to subdivision 8 d.  
 3714 The Commission's final order regarding any such petition for approval of an electric distribution grid  
 3715 transformation plan shall be entered by the Commission not more than six months after the date of filing such  
 3716 petition. The Commission shall likewise enter its final order with respect to any petition by a utility for a  
 3717 certificate to construct and operate a generating facility or facilities utilizing energy derived from sunlight,  
 3718 pursuant to subsection D of § 56-580, within six months after the date of filing such petition. The basis points  
 3719 to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity,  
 3720 and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall  
 3721 vary by type of facility, as specified in the following table:

3722	Type of Generation Facility	Basis Points	First Portion of Service Life
3723	Nuclear-powered	200	Between 12 and 25 years
3724	Carbon capture compatible, clean-coal	200	Between 10 and 20 years
3725	powered		
3726	Renewable powered, other than landfill	200	Between 5 and 15 years
3727	gas powered		
3728	Coalbed methane gas powered	150	Between 5 and 15 years
3729	Landfill gas powered	200	Between 5 and 15 years
3730	Conventional coal or combined-cycle	100	Between 10 and 20 years
3731	combustion turbine		

3732 Only those facilities as to which a rate adjustment clause under this subdivision has been previously  
3733 approved by the Commission, or as to which a petition for approval of such rate adjustment clause was filed  
3734 with the Commission, on or before January 1, 2013, shall be entitled to the enhanced rate of return on  
3735 common equity as specified in the above table during the construction phase of the facility and the approved  
3736 first portion of its service life.

3737 Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July  
3738 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by  
3739 the utility and recovered through a rate adjustment clause under this subdivision at such time as the  
3740 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all  
3741 costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be  
3742 deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70  
3743 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in  
3744 the test periods under review in the utility's next review filed after July 1, 2014. Thirty percent of all costs of  
3745 a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and  
3746 December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility  
3747 and recovered through a rate adjustment clause under this subdivision at such time as the Commission  
3748 provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a  
3749 facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for  
3750 recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all  
3751 costs shall be recovered ratably through existing base rates as determined by the Commission in the test  
3752 periods under review in the utility's next review filed after July 1, 2014.

3753 In connection with planning to meet forecasted demand for electric generation supply and assure the  
3754 adequate and sufficient reliability of service, consistent with § 56-598, planning and development activities  
3755 for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from  
3756 sunlight or from onshore or offshore wind are in the public interest.

3757 Notwithstanding any provision of Chapter 296 of the Acts of Assembly of 2018, construction, purchasing,  
3758 or leasing activities for a new utility-owned and utility-operated generating facility or facilities utilizing  
3759 energy derived from sunlight or from onshore wind with an aggregate capacity of 16,100 megawatts,  
3760 including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate  
3761 capacity of 100 megawatts, together with a utility-owned and utility-operated generating facility or facilities  
3762 utilizing energy derived from offshore wind with an aggregate capacity of not more than 3,000 megawatts,  
3763 are in the public interest. Additionally, energy storage facilities with an aggregate capacity of 2,700  
3764 megawatts are in the public interest. To the extent that a utility elects to recover the costs of any such new  
3765 generation or energy storage facility or facilities through its rates for generation and distribution services and  
3766 does not petition and receive approval from the Commission for recovery of such costs through a rate  
3767 adjustment clause described in clause (ii), the Commission shall, upon the request of the utility in a review  
3768 proceeding, provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d with  
3769 respect to all costs deemed reasonable and prudent by the Commission in a proceeding pursuant to subsection  
3770 D of § 56-580 or in a review proceeding.

3771 Electric distribution grid transformation projects are in the public interest. To the extent that a utility  
3772 elects to recover the costs of such electric distribution grid transformation projects through its rates for  
3773 generation and distribution services, and does not petition and receive approval from the Commission for  
3774 recovery of such costs through a rate adjustment clause described in clause (vi), the Commission shall, upon  
3775 the request of the utility in a review proceeding, provide for a customer credit reinvestment offset, as  
3776 applicable, pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent by the  
3777 Commission in a proceeding for approval of a plan for electric distribution grid transformation projects  
3778 pursuant to subdivision 6 or in a review proceeding.

3779 Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines nor new  
3780 underground facilities shall receive an enhanced rate of return on common equity as described herein, but  
3781 instead shall receive the utility's general rate of return during the construction phase of the facility and,  
3782 thereafter, for the entire service life of the facility. No rate adjustment clause for new underground facilities  
3783 shall allocate costs to, or provide for the recovery of costs from, customers that are served within the large  
3784 power service rate class for a Phase I Utility and the large general service rate classes for a Phase II Utility.  
3785 New underground facilities are hereby declared to be ordinary extensions or improvements in the usual  
3786 course of business under the provisions of § 56-265.2.

3787 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility is  
3788 fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.2-1600, produced from wells  
3789 located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired by methane or other  
3790 combustible gas produced by the anaerobic digestion or decomposition of biodegradable materials in a solid  
3791 waste management facility licensed by the ~~Waste Management~~ Board of *Environmental Resources or the*  
3792 *Department of Environmental Quality*. A landfill gas powered facility includes, in addition to the generation

3793 facility itself, the equipment used in collecting, drying, treating, and compressing the landfill gas and in  
 3794 transmitting the landfill gas from the solid waste management facility where it is collected to the generation  
 3795 facility where it is combusted.

3796 For purposes of this subdivision, "general rate of return" means the fair combined rate of return on  
 3797 common equity as it is determined by the Commission for such utility pursuant to subdivision 2.

3798 Notwithstanding any other provision of this subdivision, if the Commission finds during the triennial  
 3799 review conducted for a Phase II Utility in 2021 that such utility has not filed applications for all necessary  
 3800 federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled generation  
 3801 facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's generating  
 3802 resources as such resources existed on July 1, 2007, or that, if all such approvals have been received, that the  
 3803 utility has not made reasonable and good faith efforts to construct one or more such facilities that will provide  
 3804 such additional total capacity within a reasonable time after obtaining such approvals, then the Commission,  
 3805 if it finds it in the public interest, may reduce on a prospective basis any enhanced rate of return on common  
 3806 equity previously applied to any such facility to no less than the general rate of return for such utility and may  
 3807 apply no less than the utility's general rate of return to any such facility for which the utility seeks approval in  
 3808 the future under this subdivision.

3809 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from the  
 3810 Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or demonstration  
 3811 project involving a generation facility utilizing energy from offshore wind, and such utility has not, as of July  
 3812 1, 2023, commenced construction as defined for federal income tax purposes of an offshore wind generation  
 3813 facility or facilities with a minimum aggregate capacity of 250 megawatts, then the Commission, if it finds it  
 3814 in the public interest, may direct that the costs associated with any such rate adjustment clause involving said  
 3815 test or demonstration project shall thereafter no longer be recovered through a rate adjustment clause pursuant  
 3816 to subdivision 6 and shall instead be recovered through the utility's rates for generation and distribution  
 3817 services, with no change in such rates for generation and distribution services as a result of the combination  
 3818 of such costs with the other costs, revenues, and investments included in the utility's rates for generation and  
 3819 distribution services. Any such costs shall remain combined with the utility's other costs, revenues, and  
 3820 investments included in its rates for generation and distribution services until such costs are fully recovered.

3821 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-  
 3822 alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs  
 3823 incurred by a utility prior to the filing of such petition, or during the consideration thereof by the  
 3824 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are  
 3825 related to facilities and projects described in clause (i) of subdivision 6, or that are related to new  
 3826 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of  
 3827 the utility until the Commission's final order in the matter, or until the implementation of any applicable  
 3828 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs  
 3829 prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the  
 3830 consideration thereof by the Commission, that are proposed for recovery in such petition and that are related  
 3831 to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or  
 3832 coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be  
 3833 built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final  
 3834 order in the matter, or until the implementation of any applicable approved rate adjustment clauses,  
 3835 whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to  
 3836 other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or  
 3837 termination of capped rates, provided, however, that no provision of this act shall affect the rights of any  
 3838 parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC  
 3839 and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a  
 3840 regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation  
 3841 and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant  
 3842 and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize  
 3843 such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in  
 3844 which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of  
 3845 time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a  
 3846 component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such  
 3847 outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to  
 3848 any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the  
 3849 Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs  
 3850 for the purpose of proceedings conducted (a) with respect to filings under subdivision 3 made on and after  
 3851 July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate increase  
 3852 applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

3853 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be

3854 entered not more than three months, eight months, and nine months, respectively, after the date of filing of  
3855 such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be  
3856 applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or  
3857 termination of capped rates, whichever is later. At any time, the Commission may, in its discretion, for a  
3858 Phase I Utility, upon petition by such a utility or upon its own initiated proceeding, direct the consolidation of  
3859 any one or more subsets of rate adjustment clauses previously implemented pursuant to subdivision 5 or 6 in  
3860 the interest of judicial economy, customer transparency, or other factors the Commission determines to be  
3861 appropriate. Any subset of rate adjustment clauses so consolidated shall continue to be considered by the  
3862 Commission without regard to the other costs, revenues, investments, or earnings of the utility and remain as  
3863 a cost recovery mechanism independent from the utility's rates for generation and distribution services  
3864 pursuant to § 56-585.8 and subdivisions 5 and 6, but will be combined as a single rate adjustment clause for  
3865 cost recovery and review purposes. Any rate adjustment clause or subset of rate adjustment clauses so  
3866 consolidated shall be named in a manner, as determined by the Commission, that reasonably informs  
3867 customers as to the nature of the costs recovered by the consolidated rate adjustment clause. At any time, the  
3868 Commission may, in its discretion, for a Phase II Utility, upon petition by such a utility or upon its own  
3869 initiated proceeding, direct the consolidation of any one or more subsets of rate adjustment clauses previously  
3870 implemented pursuant to subdivision 5 or 6 in the interest of judicial economy, customer transparency, or  
3871 other factors the Commission determines to be appropriate. Any subset of rate adjustment clauses so  
3872 consolidated shall continue to be considered by the Commission without regard to the other costs, revenues,  
3873 investments, or earnings of the utility and remain as a cost recovery mechanism independent from the utility's  
3874 rates for generation and distribution services pursuant to this subdivision and subdivisions 5 and 6, but will be  
3875 combined as a single rate adjustment clause for cost recovery and review purposes. Any rate adjustment  
3876 clause or subset of rate adjustment clauses so consolidated shall be named in a manner, as determined by the  
3877 Commission, that reasonably informs customers as to the nature of the costs recovered by the consolidated  
3878 rate adjustment clause.

3879 8. For a Phase I Utility in any triennial review proceeding filed on or before June 30, 2023 or for a Phase  
3880 II Utility in any biennial review proceeding, for the purposes of reviewing earnings on the utility's rates for  
3881 generation and distribution services, the following utility generation and distribution costs not proposed for  
3882 recovery under any other subdivision of this subsection, as recorded per books by the utility for financial  
3883 reporting purposes and accrued against income, shall be attributed to the test periods under review and  
3884 deemed fully recovered in the period recorded: costs associated with asset impairments related to early  
3885 retirement determinations made by the utility for utility generation facilities fueled by coal, natural gas, or oil  
3886 or for automated meter reading electric distribution service meters; costs associated with projects necessary to  
3887 comply with state or federal environmental laws, regulations, or judicial or administrative orders relating to  
3888 coal combustion by-product management that the utility does not petition to recover through a rate  
3889 adjustment clause pursuant to subdivision 5 e; costs associated with severe weather events; and costs  
3890 associated with natural disasters. Such costs shall be deemed to have been recovered from customers through  
3891 rates for generation and distribution services in effect during the test periods under review unless such costs,  
3892 individually or in the aggregate, together with the utility's other costs, revenues, and investments to be  
3893 recovered through rates for generation and distribution services, result in the utility's earned return on its  
3894 generation and distribution services for the combined test periods under review to fall more than 50 basis  
3895 points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test  
3896 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase  
3897 I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision  
3898 2 for such periods. In such cases, the Commission shall, in such review proceeding, authorize deferred  
3899 recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as  
3900 determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that  
3901 would, together with the utility's other costs, revenues, and investments to be recovered through rates for  
3902 generation and distribution services, cause the utility's earned return on its generation and distribution  
3903 services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined  
3904 test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility  
3905 and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under  
3906 subdivision 2 less 70 basis points. Notwithstanding the prior sentence, the aggregate amount of actual and  
3907 reasonable costs associated with severe weather events eligible for such deferral shall not exceed an amount  
3908 that would, together with the utility's other costs, revenues, and investments to be recovered through rates for  
3909 generation and distribution services, cause the utility's earned return on its generation and distribution  
3910 services to exceed the fair rate of return authorized for the combined test periods under review. For the  
3911 purposes of determining any amount of costs that are associated with severe weather events, the Commission  
3912 shall consider nationally recognized standards such as those published by the Institute of Electrical and  
3913 Electronics Engineers (IEEE). Nothing in this section shall limit the Commission's authority, pursuant to the  
3914 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of



3915 combined test period earnings of the utility in a review, for normalization of nonrecurring test period costs  
 3916 and annualized adjustments for future costs, in determining any appropriate increase or decrease in the  
 3917 utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

3918 If the Commission determines as a result of any triennial review initiated prior to July 1, 2023 that:

3919 a. Revenue reductions related to energy efficiency measures or programs approved and deployed since the  
 3920 utility's previous triennial review have caused the utility, as verified by the Commission, during the test  
 3921 period or periods under review, considered as a whole, to earn more than 50 basis points below a fair  
 3922 combined rate of return on its generation and distribution services or, for any test period commencing after  
 3923 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70  
 3924 basis points below a fair combined rate of return on its generation and distribution services, as determined in  
 3925 subdivision 2, without regard to any return on common equity or other matters determined with respect to  
 3926 facilities described in subdivision 6, the Commission shall order increases to the utility's rates for generation  
 3927 and distribution services necessary to recover such revenue reductions. If the Commission finds, for reasons  
 3928 other than revenue reductions related to energy efficiency measures, that the utility has, during the test period  
 3929 or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate  
 3930 of return on its generation and distribution services or, for any test period commencing after December 31,  
 3931 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points  
 3932 below a fair combined rate of return on its generation and distribution services, as determined in subdivision  
 3933 2, without regard to any return on common equity or other matters determined with respect to facilities  
 3934 described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the  
 3935 opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair  
 3936 combined rate of return, using the most recently ended 12-month test period as the basis for determining the  
 3937 amount of the rate increase necessary. However, in the first triennial review proceeding conducted after  
 3938 January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all triennial  
 3939 reviews of a Phase I or Phase II utility, the Commission may not order such rate increase unless it finds that  
 3940 the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of  
 3941 providing its services and to earn not less than a fair combined rate of return on both its generation and  
 3942 distribution services, as determined in subdivision 2, without regard to any return on common equity or other  
 3943 matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-  
 3944 month test period as the basis for determining the permissibility of any rate increase under the standards of  
 3945 this sentence, and the amount thereof; and provided that, solely in connection with making its determination  
 3946 concerning the necessity for such a rate increase or the amount thereof, the Commission shall, in any triennial  
 3947 review proceeding conducted prior to July 1, 2028, exclude from this most recently ended 12-month test  
 3948 period any remaining investment levels associated with a prior customer credit reinvestment offset pursuant  
 3949 to subdivision d.

3950 b. The utility has, during the test period or test periods under review, considered as a whole, earned more  
 3951 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any  
 3952 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a  
 3953 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and  
 3954 distribution services, as determined in subdivision 2, without regard to any return on common equity or other  
 3955 matters determined with respect to facilities described in subdivision 6, the Commission shall, subject to the  
 3956 provisions of subdivisions 8 d and 9, direct that 60 percent of the amount of such earnings that were more  
 3957 than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and  
 3958 after December 31, 2013, for a Phase I Utility, that 70 percent of the amount of such earnings that were more  
 3959 than 70 basis points, above such fair combined rate of return for the test period or periods under review,  
 3960 considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period  
 3961 of six to 12 months, as determined at the discretion of the Commission, following the effective date of the  
 3962 Commission's order, and shall be allocated among customer classes such that the relationship between the  
 3963 specific customer class rates of return to the overall target rate of return will have the same relationship as the  
 3964 last approved allocation of revenues used to design base rates; or

3965 c. The utility has, during the test period or test periods under review, considered as a whole, earned more  
 3966 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any  
 3967 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a  
 3968 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and  
 3969 distribution services, as determined in subdivision 2, without regard to any return on common equity or other  
 3970 matter determined with respect to facilities described in subdivision 6, and the combined aggregate level of  
 3971 capital investment that the Commission has approved other than those capital investments that the  
 3972 Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made  
 3973 by the utility during the test periods under review in that triennial review proceeding in new utility-owned  
 3974 generation facilities utilizing energy derived from sunlight, or from wind, and in electric distribution grid  
 3975 transformation projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of

3976 the earnings that are more than 70 basis points above the utility's fair combined rate of return on its  
3977 generation and distribution services for the combined test periods under review in that triennial review  
3978 proceeding, the Commission shall, subject to the provisions of subdivision 10 and in addition to the actions  
3979 authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, in the  
3980 first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the  
3981 utility's rates ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual  
3982 revenues, with any reduction allocated to the utility's rates for generation services, and in each triennial  
3983 review of a Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that  
3984 the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its  
3985 services and to earn not less than a fair combined rate of return on its generation and distribution services, as  
3986 determined in subdivision 2, without regard to any return on common equity or other matters determined with  
3987 respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the  
3988 basis for determining the permissibility of any rate reduction under the standards of this sentence, and the  
3989 amount thereof; and

3990 d. (Expires July 1, 2028) In any review proceeding conducted after December 31, 2017, upon the request  
3991 of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that are more  
3992 than 70 basis points above the utility's fair combined rate of return on its generation and distribution services  
3993 for the test period or periods under review be credited to customer bills pursuant to subdivision 8 b, the  
3994 aggregate level of prior capital investment that the Commission has approved other than those capital  
3995 investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant to  
3996 subdivision 6 made by the utility during the test period or periods under review in both (i) new utility-owned  
3997 generation facilities utilizing energy derived from sunlight, or from onshore or offshore wind, and (ii) electric  
3998 distribution grid transformation projects, as determined by the utility's plant in service and construction work  
3999 in progress balances related to such investments as recorded per books by the utility for financial reporting  
4000 purposes as of the end of the most recent test period under review. Any such combined capital investment  
4001 amounts shall offset any customer bill credit amounts, on a ~~dollar for dollar~~ *dollar-for-dollar* basis, up to the  
4002 aggregate level of invested or committed capital under clauses (i) and (ii). The aggregate level of qualifying  
4003 invested or committed capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit  
4004 reinvestment offset, which offsets the customer bill credit amount that the utility has invested or will invest in  
4005 new solar or wind generation facilities or electric distribution grid transformation projects for the benefit of  
4006 customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the utility's fair  
4007 rate of return on its generation and distribution services, and thereby reduce or eliminate otherwise  
4008 incremental rate adjustment clause charges and increases to customer bills, which is deemed to be in the  
4009 public interest. If 100 percent of the amount of earnings that are more than 70 basis points above the utility's  
4010 fair combined rate of return on its generation and distribution services, as determined in subdivision 2,  
4011 exceeds the aggregate level of invested capital in new utility-owned generation facilities utilizing energy  
4012 derived from sunlight, or from wind, and electric distribution grid transformation projects, as provided in  
4013 clauses (i) and (ii), during the test period or periods under review, then 70 percent of the amount of such  
4014 excess shall be credited to customer bills as provided in subdivision 8 b in connection with the review  
4015 proceeding. The portion of any costs associated with new utility-owned generation facilities utilizing energy  
4016 derived from sunlight, or from wind, or electric distribution grid transformation projects that is the subject of  
4017 any customer credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through  
4018 the utility's rates for generation and distribution services over the service life of such facilities and shall not  
4019 thereafter be included in the utility's costs, revenues, and investments in future review proceedings conducted  
4020 pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to  
4021 subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing  
4022 energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is not the  
4023 subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered through the  
4024 utility's rates for generation and distribution services over the service life of such facilities and shall be  
4025 included in the utility's costs, revenues, and investments in future review proceedings conducted pursuant to  
4026 subdivision 2 until such costs are fully recovered, and if such costs are recovered through the utility's rates for  
4027 generation and distribution services, they shall not be the subject of a rate adjustment clause petition pursuant  
4028 to subdivision 6. Only the portion of such costs of new utility-owned generation facilities utilizing energy  
4029 derived from sunlight, or from wind, or electric distribution grid transformation projects that has not been  
4030 included in any customer credit reinvestment offset pursuant to this subdivision, and not otherwise recovered  
4031 through the utility's rates for generation and distribution services, may be the subject of a rate adjustment  
4032 clause petition by the utility pursuant to subdivision 6.

4033 e. In any biennial review of a Phase II Utility, the Commission's final order regarding such review shall be  
4034 entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered  
4035 shall take effect not more than 60 days after the date of the order. The fair combined rate of return on  
4036 common equity determined pursuant to subdivision 2 in such review shall apply, for purposes of reviewing

4037 the utility's earnings on its rates for generation and distribution services, to the entire two or three, as  
 4038 applicable, successive 12-month test periods ending December 31 immediately preceding the year of the  
 4039 utility's subsequent review filing under subdivision 3 and shall apply to applicable rate adjustment clauses  
 4040 under subdivisions 5 and 6 prospectively from the date the Commission's final order in the review  
 4041 proceeding, utilizing rate adjustment clause true-up protocols as the Commission in its discretion may  
 4042 determine.

4043 9. a. In any biennial review for a Phase II Utility filed on or prior to December 31, 2023, if the  
 4044 Commission determines that the utility has during the test period or test periods under review, considered as a  
 4045 whole, earned more than 70 basis points above a fair combined rate of return on its generation and  
 4046 distribution services previously authorized by the Commission, as determined in subdivision 2, without  
 4047 regard to any return on common equity or other matters determined with respect to facilities described in  
 4048 subdivision 6, which have not been combined with the utility's costs, revenues, and investments for  
 4049 generation and distribution services, the Commission shall direct that 85 percent of the amount of such  
 4050 earnings that were more than 70 basis points above such fair combined rate of return for the test period or  
 4051 periods under review, considered as a whole, be credited to customers' bills. Any such credits shall be  
 4052 amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the  
 4053 effective date of the Commission's order, and shall be allocated among customer classes such that the  
 4054 relationship between the specific customer class rates of return to the overall target rate of return will have the  
 4055 same relationship as the last approved allocation of revenues used to design base rates.

4056 b. In any biennial review for a Phase II Utility filed on or after January 1, 2024, if the Commission  
 4057 determines that the utility has during the test period or test periods under review, considered as a whole,  
 4058 earned above its fair combined rate of return on its generation and distribution services previously authorized  
 4059 by the Commission, as determined in subdivision 2, without regard to any return on common equity or other  
 4060 matters determined with respect to facilities described in subdivision 6, which have not been combined with  
 4061 the utility's costs, revenues, and investments for generation and distribution services, the Commission shall  
 4062 direct that 85 percent of the amount of such earnings above such fair combined rate of return for the test  
 4063 period or periods under review, considered as a whole, be credited to customers' bills. Further, if the  
 4064 Commission determines that during the test period or test periods under review, considered as a whole, a  
 4065 Phase II Utility earned more than 150 basis points above a fair combined rate of return on its generation and  
 4066 distribution services previously authorized by the Commission, without regard to any return on common  
 4067 equity or other matters determined with respect to facilities described in subdivision 6, which have not been  
 4068 combined with the utility's costs, revenues, and investments for generation and distribution services, the  
 4069 Commission shall direct that all such earnings that were more than 150 basis points above such fair combined  
 4070 rate of return for the test period or periods under review, considered as a whole, be credited to customers'  
 4071 bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of  
 4072 the Commission, following the effective date of the Commission's order, and shall be allocated among  
 4073 customer classes such that the relationship between the specific customer class rates of return to the overall  
 4074 target rate of return will have the same relationship as the last approved allocation of revenues used to design  
 4075 base rates.

4076 10. If, as a result of a triennial review required under this subsection and conducted with respect to any  
 4077 test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected  
 4078 to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than  
 4079 December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission  
 4080 finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test  
 4081 period or periods under review, considered as a whole, earned more than 50 basis points above a fair  
 4082 combined rate of return on its generation and distribution services or, for any test period commencing after  
 4083 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70  
 4084 basis points above a fair combined rate of return on its generation and distribution services, as determined in  
 4085 subdivision 2, without regard to any return on common equity or other matters determined with respect to  
 4086 facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the  
 4087 most recently ended 12-month test period exceeded the annual increases in the United States Average  
 4088 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor  
 4089 Statistics of the United States U.S. Department of Labor, compounded annually, when compared to the total  
 4090 aggregate regulated rates of such utility as determined pursuant to the review conducted for the base period,  
 4091 the Commission shall, unless it finds that such action is not in the public interest or that the provisions of  
 4092 subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test  
 4093 period or periods under review, considered as a whole that were more than 50 basis points, or, for any test  
 4094 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase  
 4095 I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers'  
 4096 bills, in lieu of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to  
 4097 this subdivision in connection with any triennial review unless such bill credits would be payable pursuant to

4098 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any  
4099 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized and  
4100 allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this  
4101 subdivision:

4102 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to  
4103 stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31,  
4104 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period  
4105 with respect to which credits have been applied to customers' bills under the provisions of this subdivision,  
4106 whichever is later.

4107 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for  
4108 any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010,  
4109 pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses  
4110 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a;  
4111 (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase  
4112 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July  
4113 1, 2009.

4113 11. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any  
4114 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and  
4115 cost of capital of such utility, excluding any debt associated with securitized bonds that are the obligation of  
4116 non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity ratio of such  
4117 capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity  
4118 ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions  
4119 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any  
4120 other entity with which such utility may be affiliated. In particular, and without limitation, the Commission  
4121 shall determine the federal and state income tax costs for any such utility that is part of a publicly traded,  
4122 consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated  
4123 according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates,  
4124 and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income  
4125 tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable  
4126 income or loss of its affiliates.

4127 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an  
4128 increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications;  
4129 however, in any such filing, a fair rate of return on common equity shall be determined pursuant to  
4130 subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power  
4131 costs as provided in § 56-249.6.

4132 C. Except as otherwise provided in this section, the Commission shall exercise authority over the rates,  
4133 terms and conditions of investor-owned incumbent electric utilities for the provision of generation,  
4134 transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions of  
4135 Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

4136 D. The Commission may determine, during any proceeding authorized or required by this section, the  
4137 reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with  
4138 the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence  
4139 of any such cost shall be consistent with the Commission's authority to determine the reasonableness or  
4140 prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining  
4141 the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable  
4142 energy resources, the Commission shall consider the extent to which such renewable energy resources,  
4143 whether utility-owned or by contract, further the objectives of the Commonwealth Clean Energy Policy set  
4144 forth in § 45.2-1706.1, and shall also consider whether the costs of such resources is likely to result in  
4145 unreasonable increases in rates paid by customers.

4146 E. Notwithstanding any other provision of law, the Commission shall determine the amortization period  
4147 for recovery of any appropriate costs due to the early retirement of any electric generation facilities owned or  
4148 operated by any Phase I Utility or Phase II Utility. In making such determination, the Commission shall (i)  
4149 perform an independent analysis of the remaining undepreciated capital costs; (ii) establish a recovery period  
4150 that best serves ratepayers; and (iii) allow for the recovery of any carrying costs that the Commission deems  
4151 appropriate.

4152 F. The Commission shall include in its report required by subsection B of § 56-596 any information  
4153 concerning the reliability impacts of generation unit additions and retirement determinations by a Phase I or  
4154 Phase II Utility along with the potential impact on the purchase of power from generation assets outside the  
4155 Virginia jurisdiction used to serve the utility's native load, utilizing information from the respective utility's  
4156 integrated resource plan or information from the respective utility's plan filed pursuant to subsection D of §  
4157 56-585.5.

4158 G. The Commission shall promulgate such rules and regulations as may be necessary to implement the

4159 provisions of this section.

4160 **§ 56-586.1. Electric energy emergencies.**

4161 A. As used in this section, "electric energy emergency" means an unplanned interruption in the generation  
4162 or transmission of electricity resulting from a hurricane, ice storm, windstorm, earthquake or similar natural  
4163 phenomena, or from a criminal act affecting such generation or transmission, act of war or act of terrorism,  
4164 which interruption is (i) of such severity that minimum levels of reliable service cannot be maintained using  
4165 resources practicably obtainable from the market and (ii) so imminently and substantially threatening to the  
4166 health, safety or welfare of residents of this Commonwealth that immediate action of state government is  
4167 necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable  
4168 damage to property.

4169 B. The Governor is authorized, after finding that an electric energy emergency exists and that appropriate  
4170 federal and state agencies and appropriate reliability councils cannot adequately address such emergency, to  
4171 declare an electric energy emergency by filing a written declaration with the Secretary of the Commonwealth.  
4172 The declaration shall state the counties and cities or utility service areas of the Commonwealth in which the  
4173 declaration is applicable, or its statewide application. A declared electric energy emergency shall go into  
4174 immediate effect upon filing and continue in effect for the period prescribed in the declaration, but not more  
4175 than ~~thirty~~ 30 days. At the end of the prescribed period, the Governor may issue another declaration  
4176 extending the emergency. The Governor shall terminate such declaration as soon as the basis for such  
4177 declaration no longer exists.

4178 C. During a declared electric energy emergency, the Governor is authorized, in compliance with  
4179 guidelines of the Department of Emergency Services promulgated as provided in subsection G, to require any  
4180 generator or any municipal electric utility that is capable of generating but (i) is not generating or (ii) is not  
4181 generating at its full potential during such declared electric emergency, to generate, dispatch or sell electricity  
4182 from a facility that it operates within the Commonwealth, to the Commonwealth for distribution within the  
4183 areas of the Commonwealth designated in the declaration. The quantity of electricity required to be  
4184 generated, dispatched, or sold, and the duration of such requirements, shall be as determined by the Governor  
4185 to be necessary to alleviate the electric energy emergency hardship. The Commonwealth shall compensate an  
4186 entity required to generate, dispatch, or sell electricity pursuant to this subsection, and the operator of any  
4187 transmission facilities over which the electricity is transmitted, in the manner provided in § 56-522, mutatis  
4188 mutandis, unless otherwise provided by federal law. The Department of Environmental Quality, ~~the State Air~~  
4189 ~~Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board~~ shall  
4190 issue any temporary or emergency permit, order, or variance necessary to authorize any permit amendments  
4191 or other changes needed to meet the requirements imposed under this section and the Governor may petition  
4192 the President to declare a regional energy emergency under 42 U.S.C. § 7410 ~~(f)~~ 7410(f) as necessary to  
4193 suspend enforcement of any provision of the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.* Any increased  
4194 operation required during such declared emergency shall not be counted towards the number of hours of  
4195 operation allowed during the year. No civil charges or penalties shall be imposed for any violation that occurs  
4196 as a result of actions taken that are necessary for the required generation, dispatch or sale during the declared  
4197 electric energy emergency. The foregoing provisions shall apply to all actions the entity takes in connection  
4198 with such required generation, dispatch or sale during the period of the declared emergency.

4199 D. During a declared electric energy emergency, the Governor may use the services, equipment, supplies,  
4200 and facilities of existing departments, offices, and agencies of the Commonwealth, and of the political  
4201 subdivisions thereof, to the maximum extent practicable and necessary to meet the electric energy  
4202 emergency. The officers and personnel of all such departments, offices, and agencies shall cooperate with and  
4203 extend such services and facilities to the Governor upon request.

4204 E. During a declared electric energy emergency, the Governor is authorized to request the Secretary of the  
4205 ~~United States~~ U.S. Department of Energy to invoke ~~section~~ § 202(C) of the Federal Power Act, 16 U.S.C. §  
4206 824a (1935).

4207 F. The General Assembly is authorized by joint resolution to terminate any declaration of an electric  
4208 energy emergency. The emergency shall be terminated at the time of filing of the joint resolution with the  
4209 Secretary of the Commonwealth.

4210 G. The Department of Emergency Services, in consultation with the Commission and the Secretary of  
4211 Commerce and Trade, shall establish guidelines for the implementation of the Governor's powers pursuant to  
4212 subsection C that protect the public health and safety and prevent unnecessary or avoidable damage to  
4213 property with a minimum of economic disruption to generators, transmitters and distributors of electricity.  
4214 Such guidelines shall:

4215 1. Define various foreseeable levels of electric energy emergencies and specify appropriate measures to be  
4216 taken for each type of electric energy emergency as necessary to protect the public health or safety or prevent  
4217 unnecessary or avoidable damage to property;

4218 2. Prescribe appropriate response measures for each level of electric energy emergency; and

4219 3. Equitably distribute the burdens and benefits resulting from the implementation of this section among

4220 other members of the affected class of persons within all geographic regions of the Commonwealth.

4221 H. During a declared electric energy emergency, the attorney general may bring an action for injunctive or  
4222 other appropriate relief in the Circuit Court of the City of Richmond to secure prompt compliance. The court  
4223 may issue an ex parte temporary order without notice that shall enforce the prohibitions, restrictions or  
4224 actions that are necessary to secure compliance with the guideline, order or declaration.

4225 I. During a declared electric energy emergency, no person shall intentionally violate any guideline  
4226 adopted or declaration issued pursuant to this section. Any person who violates this section is guilty of a  
4227 Class 1 misdemeanor.

4228 **§ 58.1-2289. Disposition of tax revenue generally.**

4229 A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the  
4230 Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be  
4231 promptly paid into the state treasury and shall constitute special funds within the Commonwealth  
4232 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use  
4233 in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall  
4234 accrue to these funds.

4235 The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of  
4236 gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of  
4237 gasoline for purity.

4238 B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less  
4239 refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the  
4240 Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on  
4241 warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth  
4242 relating to aviation, for the construction, maintenance and improvement of airports and landing fields to  
4243 which the public now has or which it is proposed shall have access, and for the promotion of aviation in the  
4244 interest of operators and the public generally.

4245 C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline,  
4246 gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment  
4247 used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia  
4248 Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research  
4249 and educational phases of the agricultural program, including supplemental salary payments to certain  
4250 employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and  
4251 Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses  
4252 of the Virginia Agricultural Council.

4253 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial  
4254 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the  
4255 state treasury to be made available to the Board of Wildlife Resources until expended for the purposes  
4256 provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and  
4257 maintenance of public boating access areas on the public waters of this Commonwealth and for other  
4258 activities and purposes of direct benefit and interest to the boating public and for no other purpose. However,  
4259 one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing  
4260 boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement  
4261 and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any  
4262 expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be  
4263 made according to a plan developed by the Virginia Marine Resources Commission.

4264 From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the  
4265 propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use  
4266 by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the ~~State Water~~  
4267 ~~Control Board~~ *Department of Environmental Quality*, and the Commonwealth Transportation Board to (i)  
4268 improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in  
4269 Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries  
4270 management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set  
4271 forth in § 33.2-1510, a sum as established by the General Assembly.

4272 E. All remaining revenue shall be deposited into the Commonwealth Transportation Fund established  
4273 pursuant to § 33.2-1524.

4274 **§ 58.1-3660. Certified pollution control equipment and facilities.**

4275 A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a  
4276 separate class of property and shall constitute a classification for local taxation separate from other such  
4277 classification of real or personal property and such property. Certified pollution control equipment and  
4278 facilities shall be exempt from state and local taxation pursuant to Article X, § 6 (d) of the Constitution of  
4279 Virginia.

4280 B. As used in this section:

4281 "Certified pollution control equipment and facilities" means any property, including real or personal

4282 property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution  
 4283 of the atmosphere or waters of the Commonwealth and which the state certifying authority or subdivision  
 4284 certifying authority having jurisdiction with respect to such property has certified to the Department of  
 4285 Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program  
 4286 or requirements for abatement or control of water or atmospheric pollution or contamination, except that in  
 4287 the case of equipment, facilities, devices, or other property intended for use by any political subdivision in  
 4288 conjunction with the operation of its water, wastewater, stormwater, or solid waste management facilities or  
 4289 systems, including property that may be financed pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1,  
 4290 the state certifying authority or subdivision certifying authority having jurisdiction with respect to such  
 4291 property shall, upon the request of the political subdivision, make such certification prospectively for  
 4292 property to be constructed, reconstructed, erected, or acquired for such purposes. Such property shall include,  
 4293 but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other  
 4294 vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or  
 4295 other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from,  
 4296 landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified  
 4297 to the Department of Taxation by a state certifying authority or subdivision certifying authority. Such  
 4298 property shall include solar energy equipment, facilities, or devices owned or operated by a business that  
 4299 collect, generate, transfer, or store thermal or electric energy whether or not such property has been certified  
 4300 to the Department of Taxation by a state certifying authority or subdivision certifying authority. Such  
 4301 property shall also include energy storage systems, whether or not such property has been certified to the  
 4302 Department of Taxation by a state certifying authority or subdivision certifying authority. All such property  
 4303 as described in this definition shall not include the land on which such equipment or facilities are located.

4304 "Energy storage system" means equipment, facilities, or devices that are capable of absorbing energy,  
 4305 storing it for a period of time, and redelivering that energy after it has been stored.

4306 "State certifying authority" means the ~~State Water Control Board~~ *Department of Environmental Quality* or  
 4307 the Virginia Department of Health, for water pollution; the ~~State Air Pollution Control Board~~ *Department of*  
 4308 *Environmental Quality*, for air pollution; the Department of Energy, for solar energy projects, energy storage  
 4309 systems, and for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the  
 4310 ~~Virginia Waste Management Board~~ *Department of Environmental Quality*, for waste disposal facilities,  
 4311 natural gas recovered from waste facilities, and landfill gas production facilities, and shall include any  
 4312 interstate agency authorized to act in place of a certifying authority of the Commonwealth.

4313 "Subdivision certifying authority" means the body of a political subdivision responsible for administering  
 4314 the political subdivision's water, wastewater, stormwater, or solid waste management facilities or systems. A  
 4315 subdivision certifying authority may only certify property pursuant to this section if the property being  
 4316 certified is equipment, facilities, devices, or other property intended for use by the political subdivision in  
 4317 conjunction with the operation of its water, wastewater, stormwater, or solid waste management facilities or  
 4318 systems. If property is certified by a subdivision certifying authority, it shall not be required to be certified by  
 4319 a state certifying authority.

4320 C. For solar photovoltaic (electric energy) systems, this exemption applies only to (i) projects equaling 20  
 4321 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial  
 4322 interconnection request form has been filed with an electric utility or a regional transmission organization on  
 4323 or before December 31, 2018; (ii) projects equaling 20 megawatts or less, as measured in alternating current  
 4324 (AC) generation capacity, that serve any of the public institutions of higher education listed in § 23.1-100 or  
 4325 any private college as defined in § 23.1-105; (iii) 80 percent of the assessed value of projects for which an  
 4326 initial interconnection request form has been filed with an electric utility or a regional transmission  
 4327 organization (a) between January 1, 2015, and June 30, 2018, for projects greater than 20 megawatts or (b) on  
 4328 or after July 1, 2018, for projects greater than 20 megawatts and less than 150 megawatts, as measured in  
 4329 alternating current (AC) generation capacity, and that are first in service on or after January 1, 2017; (iv)  
 4330 projects equaling five megawatts or less, as measured in alternating current (AC) generation capacity, for  
 4331 which an initial interconnection request form has been filed with an electric utility or a regional transmission  
 4332 organization on or after January 1, 2019; and (v) 80 percent of the assessed value of all other projects  
 4333 equaling more than five megawatts and less than 150 megawatts, as measured in alternating current (AC)  
 4334 generation capacity for which an initial interconnection request form has been filed with an electric utility or  
 4335 a regional transmission organization on or after January 1, 2019.

4336 D. The exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as  
 4337 measured in alternating current (AC) generation capacity, shall not apply to any such project unless an  
 4338 application has been filed with the locality for the project before July 1, 2030, regardless of whether a locality  
 4339 assesses a revenue share on such project pursuant to the provisions of § 58.1-2636. If a locality adopts an  
 4340 energy revenue share ordinance under § 58.1-2636, the exemption for solar photovoltaic (electric energy)  
 4341 projects greater than five megawatts, as measured in alternating current (AC) generation capacity, shall be  
 4342 100 percent of the assessed value. If a locality does not adopt an energy revenue share ordinance under §

4343 58.1-2636, the exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as  
 4344 measured in alternating current (AC) generation capacity, for which an initial interconnection request form  
 4345 has been filed with an electric utility or a regional transmission organization, shall be 80 percent of the  
 4346 assessed value when an application has been filed with the locality prior to July 1, 2030. For purposes of this  
 4347 subsection, "application has been filed with the locality" means an applicant has filed an application for a  
 4348 zoning confirmation from the locality for a by-right use or an application for land use approval under the  
 4349 locality's zoning ordinance to include an application for a conditional use permit, special use permit, special  
 4350 exception, or other application as set out in the locality's zoning ordinance.

4351 E. For pollution control equipment and facilities certified by the Virginia Department of Health, this  
 4352 exemption applies only to onsite sewage systems that serve 10 or more households, use nitrogen-reducing  
 4353 processes and technology, and are constructed, wholly or partially, with public funds.

4354 F. Notwithstanding any provision to the contrary, for any solar photovoltaic project described in clauses  
 4355 (iii) and (v) of subsection C for which an initial interconnection request form has been filed with an electric  
 4356 utility or a regional transmission organization on or after January 1, 2019, the amount of the exemption shall  
 4357 be as follows: 80 percent of the assessed value in the first five years in service after commencement of  
 4358 commercial operation, 70 percent of the assessed value in the second five years in service, and 60 percent of  
 4359 the assessed value for all remaining years in service.

4360 G. Notwithstanding any provision to the contrary, the exemption for energy storage systems provided  
 4361 under this section (i) shall apply only to projects greater than five megawatts and less than 150 megawatts, as  
 4362 measured in alternating current (AC) storage capacity, and (ii) shall be in the following amounts: 80 percent  
 4363 of the assessed value in the first five years of service after commencement of commercial operation, 70  
 4364 percent of the assessed value in the second five years in service, and 60 percent of the assessed value for all  
 4365 remaining years in service.

4366 H. The exemption for energy storage systems greater than five megawatts, as measured in alternating  
 4367 current (AC) storage capacity, shall not apply to any such project unless an application has been filed with the  
 4368 locality for the project before July 1, 2030, regardless of whether a locality assesses a revenue share on such  
 4369 project pursuant to the provisions of § 58.1-2636. If a locality adopts an energy revenue share ordinance  
 4370 under § 58.1-2636, the exemption for energy storage systems greater than five megawatts, as measured in  
 4371 alternating current (AC) storage capacity, shall be 100 percent of the assessed value. If a locality does not  
 4372 adopt an energy revenue share ordinance under § 58.1-2636, the exemption for energy storage systems  
 4373 greater than five megawatts, as measured in alternating current (AC) storage capacity, shall be as set out in  
 4374 subsection G when an application has been filed with the locality prior to July 1, 2030. For the purposes of  
 4375 this subsection, "application has been filed with the locality" means an applicant has filed an application for a  
 4376 zoning confirmation from the locality for a by-right use or an application for land use approval under the  
 4377 locality's zoning ordinance to include an application for a conditional use permit, special use permit, special  
 4378 exception, or other application as set out in the locality's zoning ordinance.

4379 **§ 58.1-3664. Environmental restoration sites.**

4380 Environmental restoration sites, as defined herein, are hereby declared to be a separate class of property  
 4381 and shall constitute a classification for local taxation separate from other such classification of real property.  
 4382 The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property  
 4383 from local taxation annually for a period not in excess of five years.

4384 "Environmental restoration site" means real estate which contains or did contain environmental  
 4385 contamination from the release of hazardous substances, hazardous wastes, solid waste or petroleum, the  
 4386 restoration of which would abate or prevent pollution to the atmosphere or waters of the Commonwealth and  
 4387 which (i) is subject to voluntary remediation pursuant to § 10.1-1232 and (ii) receives a certificate of  
 4388 continued eligibility from the ~~Virginia Waste Management~~ Board of *Environmental Resources* during each  
 4389 year for which it qualifies for the tax treatment described in this section.

4390 **§ 62.1-44.3. (Effective until July 1, 2024) Definitions.**

4391 ~~Unless a different meaning is required by the context, the following terms as used in this chapter shall~~  
 4392 ~~have the meanings hereinafter respectively ascribed to them, unless the context requires a different meaning:~~

4393 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not  
 4394 limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation,  
 4395 recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of  
 4396 the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife  
 4397 resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's  
 4398 waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply),  
 4399 agricultural uses, electric power generation, commercial, and industrial uses.

4400 "Board" means the ~~State Water Control~~ Board of *Environmental Resources*. However, when used outside  
 4401 the context of the promulgation of regulations, including regulations to establish general permits, pursuant to  
 4402 this chapter, "Board" means the Department of Environmental Quality.

4403 "Certificate" means any certificate issued by the Department.

4404 "Department" means the Department of Environmental Quality.



- 4405 "Director" means the Director of the Department of Environmental Quality.
- 4406 "Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal  
4407 mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other  
4408 industry or plant or works the operation of which produces industrial wastes or other wastes or which may  
4409 otherwise alter the physical, chemical or biological properties of any state waters.
- 4410 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.
- 4411 "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture,  
4412 trade, or business or from the development of any natural resources.
- 4413 "The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.
- 4414 "Member" means a member of the Board.
- 4415 "Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300  
4416 and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not  
4417 include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. §  
4418 1344 or any regulations promulgated pursuant thereto.
- 4419 "Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any  
4420 activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any  
4421 activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any  
4422 regulations promulgated pursuant thereto.
- 4423 "Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil,  
4424 chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any  
4425 state waters.
- 4426 "Owner" means the Commonwealth or any of its political subdivisions, including but not limited to  
4427 sanitation district commissions and authorities and any public or private institution, corporation, association,  
4428 firm, or company organized or existing under the laws of this or any other state or country, or any officer or  
4429 agency of the United States, or any person or group of persons acting individually or as a group that owns,  
4430 operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential  
4431 discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the  
4432 capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-  
4433 44.5.
- 4434 "Person" means an individual, corporation, partnership, association, governmental body, municipal  
4435 corporation, or any other legal entity.
- 4436 "Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.
- 4437 "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as  
4438 will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public  
4439 health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable  
4440 treatment for use as present or possible future sources of public water supply; or (c) unsuitable for  
4441 recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of  
4442 the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial  
4443 wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but  
4444 which, in combination with such alteration of or discharge or deposit to state waters by other owners, is  
4445 sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)  
4446 contributing to the contravention of standards of water quality duly established by the Board, are "pollution"  
4447 for the terms and purposes of this chapter.
- 4448 "Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations  
4449 including the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or  
4450 orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by  
4451 the owner of a publicly owned treatment works or by the regulations of the Board.
- 4452 "Pretreatment standards" means any standards of performance or other requirements imposed by  
4453 regulation of the Board upon an industrial user of a publicly owned treatment works.
- 4454 "Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial  
4455 wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur.  
4456 Specifically excluded from this definition is "gray water."
- 4457 "Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce  
4458 reclaimed water for a direct beneficial or controlled use that would not otherwise occur.
- 4459 "Regulation" means a regulation issued under *subdivision (10) of § 62.1-44.15* ~~(10)~~.
- 4460 "Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in  
4461 accordance with the requirements of the Board.
- 4462 "Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to *subdivision*  
4463 *(7) of § 62.1-44.15* ~~(7)~~.
- 4464 "Ruling" means a ruling issued under *subdivision (9) of § 62.1-44.15* ~~(9)~~.
- 4465 "Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or

4466 other places together with such industrial wastes and underground, surface, storm, or other water as may be  
4467 present.

4468 "Sewage treatment works" or "treatment works" means any device or system used in the storage,  
4469 treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but  
4470 not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that  
4471 are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or  
4472 effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative  
4473 discharging sewage systems.

4474 "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other  
4475 construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or  
4476 other wastes to a point of ultimate disposal.

4477 "Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

4478 "Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

4479 "State waters" means all water, on the surface and under the ground, wholly or partially within or  
4480 bordering the Commonwealth or within its jurisdiction, including wetlands.

4481 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency  
4482 and duration sufficient to support, and that under normal circumstances do support, a prevalence of  
4483 vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps,  
4484 marshes, bogs and similar areas.

4485 **§ 62.1-44.3. (Effective July 1, 2024) Definitions.**

4486 ~~Unless a different meaning is required by the context, the following terms as used in this chapter shall~~  
4487 ~~have the meanings hereinafter respectively ascribed to them, unless the context requires a different meaning:~~

4488 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not  
4489 limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation,  
4490 recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of  
4491 the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife  
4492 resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's  
4493 waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply),  
4494 agricultural uses, electric power generation, commercial, and industrial uses.

4495 "Board" means the ~~State Water Control~~ *Board of Environmental Resources*. However, when used outside  
4496 the context of the promulgation of regulations, including regulations to establish general permits, pursuant to  
4497 this chapter, "Board" means the Department of Environmental Quality.

4498 "Certificate" means any certificate or permit issued by the Department.

4499 "Department" means the Department of Environmental Quality.

4500 "Director" means the Director of the Department of Environmental Quality.

4501 "*Executive Director*" means the *Executive Director of the Board of Environmental Resources*.

4502 "Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal  
4503 mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other  
4504 industry or plant or works the operation of which produces industrial wastes or other wastes or which may  
4505 otherwise alter the physical, chemical or biological properties of any state waters.

4506 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

4507 "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture,  
4508 trade, or business or from the development of any natural resources.

4509 "Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued  
4510 by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements of § 62.1-  
4511 44.15:34 have been met or (ii) a Virginia Erosion and Sediment Control Program authority after the  
4512 requirements of § 62.1-44.15:55 have been met.

4513 "The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

4514 "Member" means a member of the Board.

4515 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a  
4516 municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets,  
4517 catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

4518 1. Owned or operated by a federal entity, state, city, town, county, district, association, or other public  
4519 body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes,  
4520 stormwater, or other wastes, including a special district under state law such as a sewer district, flood control  
4521 district, drainage district or similar entity, or a designated and approved management agency under § 208 of  
4522 the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface waters;

4523 2. Designed or used for collecting or conveying stormwater;

4524 3. Not a combined sewer; and

4525 4. Not part of a publicly owned treatment works.

4526 "Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300

4527 and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not  
 4528 include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. §  
 4529 1344 or any regulations promulgated pursuant thereto.

4530 "Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any  
 4531 activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any  
 4532 activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any  
 4533 regulations promulgated pursuant thereto.

4534 "Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil,  
 4535 chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any  
 4536 state waters.

4537 "Owner" means the Commonwealth or any of its political subdivisions, including but not limited to  
 4538 sanitation district commissions and authorities and any public or private institution, corporation, association,  
 4539 firm, or company organized or existing under the laws of this or any other state or country, or any officer or  
 4540 agency of the United States, or any person or group of persons acting individually or as a group that owns,  
 4541 operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential  
 4542 discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the  
 4543 capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-  
 4544 44.5.

4545 "Person" means an individual, corporation, partnership, association, governmental body, municipal  
 4546 corporation, or any other legal entity.

4547 "Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

4548 "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as  
 4549 will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public  
 4550 health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable  
 4551 treatment for use as present or possible future sources of public water supply; or (c) unsuitable for  
 4552 recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of  
 4553 the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial  
 4554 wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but  
 4555 which, in combination with such alteration of or discharge or deposit to state waters by other owners, is  
 4556 sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)  
 4557 contributing to the contravention of standards of water quality duly established by the Board, are "pollution"  
 4558 for the terms and purposes of this chapter.

4559 "Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations  
 4560 including the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or  
 4561 orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by  
 4562 the owner of a publicly owned treatment works or by the regulations of the Board.

4563 "Pretreatment standards" means any standards of performance or other requirements imposed by  
 4564 regulation of the Board upon an industrial user of a publicly owned treatment works.

4565 "Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial  
 4566 wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur.  
 4567 Specifically excluded from this definition is "gray water."

4568 "Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce  
 4569 reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

4570 "Regulation" means a regulation issued under subdivision (10) of § 62.1-44.15.

4571 "Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in  
 4572 accordance with the requirements of the Board.

4573 "Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to subdivision  
 4574 (7) of § 62.1-44.15.

4575 "Ruling" means a ruling issued under subdivision (9) of § 62.1-44.15.

4576 "Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or  
 4577 other places together with such industrial wastes and underground, surface, storm, or other water as may be  
 4578 present.

4579 "Sewage treatment works" or "treatment works" means any device or system used in the storage,  
 4580 treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but  
 4581 not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that  
 4582 are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or  
 4583 effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative  
 4584 discharging sewage systems.

4585 "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other  
 4586 construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or  
 4587 other wastes to a point of ultimate disposal.

4588 "Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

4589 "Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

4590 "State waters" means all water, on the surface and under the ground, wholly or partially within or  
4591 bordering the Commonwealth or within its jurisdiction, including wetlands.

4592 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency  
4593 and duration sufficient to support, and that under normal circumstances do support, a prevalence of  
4594 vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps,  
4595 marshes, bogs and similar areas.

4596 **§ 62.1-44.14. Executive Director; employment of personnel; supervision; budget preparation.**

4597 The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.2-106.  
4598 The Executive Director shall serve as executive officer and devote his whole time to the performance of his  
4599 duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the  
4600 Board may delegate to its the Executive Director any of the powers and duties invested in it by this chapter  
4601 except the adoption and promulgation of standards, rules, and regulations; and the revocation of certificates.  
4602 The Executive Director is authorized to issue, modify, or revoke orders in cases of emergency as described in  
4603 §§ subdivision (8b) of § 62.1-44.15 (8b) and § 62.1-44.34:20 of this chapter. The Executive Director is  
4604 further authorized to employ such consultants and full-time technical and clerical workers as are necessary  
4605 and within the available funds to carry out the purposes of this chapter.

4606 It shall be the duty of the Executive Director to exercise general supervision and control over the quality  
4607 and management of all state waters and to administer and enforce this chapter; and all certificates, standards,  
4608 policies, rules, regulations, rulings, and special orders promulgated by the Board. The Executive Director  
4609 shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures  
4610 pursuant to appropriations. The Executive Director shall be vested with all the authority of the Board when it  
4611 is not in session, except for the Board's authority to issue special orders pursuant to subdivisions (8a) and (8b)  
4612 of § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the  
4613 Executive Director have the authority to adopt or promulgate any regulation.

4614 **§ 62.1-44.15. (Effective until July 1, 2024) Powers and duties; civil penalties.**

4615 It shall be the duty of the Board and it shall have the authority:

4616 (1) [Repealed.]

4617 (2) To study and investigate all problems concerned with the quality of state waters and to make reports  
4618 and recommendations.

4619 (2a) To study and investigate methods, procedures, devices, appliances, and technologies that could assist  
4620 in water conservation or water consumption reduction.

4621 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or without  
4622 the Commonwealth.

4623 (2c) To make reports concerning, and formulate recommendations based upon, any such water  
4624 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are  
4625 met.

4626 (3a) To establish such standards of quality and policies for any state waters consistent with the general  
4627 policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and  
4628 to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or  
4629 policies thus established, except that a description of provisions of any proposed standard or policy adopted  
4630 by regulation which are more restrictive than applicable federal requirements, together with the reason why  
4631 the more restrictive provisions are needed, shall be provided to the standing committee of each house of the  
4632 General Assembly to which matters relating to the content of the standard or policy are most properly  
4633 referable. The Board shall, from time to time, but at least once every three years, hold public hearings  
4634 pursuant to § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings  
4635 pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting,  
4636 modifying, or canceling such standards. Whenever the Board considers the adoption, modification,  
4637 amendment or cancellation of any standard, it shall give due consideration to, among other factors, the  
4638 economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the  
4639 standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the  
4640 public health standards issued by the Virginia Department of Health with respect to issues of public health  
4641 policy and protection. If the Board does not follow the public health standards of the Virginia Department of  
4642 Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned  
4643 parties.

4644 (3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified,  
4645 amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000 et seq.).

4646 (4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover  
4647 methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may  
4648 cooperate with any public or private agency in the conduct of such experiments, investigations and research  
4649 and may receive in behalf of the Commonwealth any moneys that any such agency may contribute as its

4650 share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for  
 4651 which they are contributed and any balance remaining after the conclusion of the experiments, investigations,  
 4652 studies, and research, shall be returned to the contributors.

4653 (5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage,  
 4654 industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical,  
 4655 chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1,  
 4656 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that  
 4657 significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent  
 4658 flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing  
 4659 wetland acreage or functions. However, to the extent allowed by federal law, any person holding a certificate  
 4660 issued by the Board that is intending to upgrade the permitted facility by installing technology, control  
 4661 equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in  
 4662 improved energy efficiency, reduction in the amount of nutrients discharged, and improved water quality  
 4663 shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the  
 4664 demonstration anticipated by this subdivision to the Department no later than 30 days prior to commencing  
 4665 construction.

4666 (5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia  
 4667 Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water  
 4668 Protection Permit shall be based upon the projected duration of the project, the length of any required  
 4669 monitoring, or other project operations or permit conditions; however, the term shall not exceed 15 years. The  
 4670 term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia  
 4671 Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of  
 4672 Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been  
 4673 issued to ensure compliance with statutory, regulatory, and permit requirements. Department personnel  
 4674 performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient  
 4675 management training and certification program established in § 10.1-104.2. The term of a certificate issued  
 4676 by the Board shall not be extended by modification beyond the maximum duration and the certificate shall  
 4677 expire at the end of the term unless an application for a new permit has been timely filed as required by the  
 4678 regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit  
 4679 before the expiration date of the previous permit.

4680 (5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a  
 4681 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the  
 4682 regulations of the Board:

4683 1. The owner has violated any regulation or order of the Board, any condition of a certificate, any  
 4684 provision of this chapter, or any order of a court, where such violation results in a release of harmful  
 4685 substances into the environment or poses a substantial threat of release of harmful substances into the  
 4686 environment or presents a hazard to human health or the violation is representative of a pattern of serious or  
 4687 repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to  
 4688 comply with applicable laws, regulations, or requirements;

4689 2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in  
 4690 applying for a certificate, or in any other report or document required under this law or under the regulations  
 4691 of the Board;

4692 3. The activity for which the certificate was issued endangers human health or the environment and can be  
 4693 regulated to acceptable levels by amendment or revocation of the certificate; or

4694 4. There exists a material change in the basis on which the permit was issued that requires either a  
 4695 temporary or a permanent reduction or elimination of any discharge controlled by the certificate necessary to  
 4696 protect human health or the environment.

4697 (5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under  
 4698 Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a  
 4699 demonstration of financial responsibility for the completion of compensatory mitigation requirements.  
 4700 Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance  
 4701 bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration  
 4702 of financial responsibility for the completion of compensatory mitigation required for a particular project,  
 4703 then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this  
 4704 requirement.

4705 (6) To make investigations and inspections, to ensure compliance with any certificates, standards,  
 4706 policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to furnish  
 4707 advice, recommendations, or instructions for the purpose of obtaining such compliance. In recognition of §§  
 4708 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into a memorandum of  
 4709 understanding establishing a common format to consolidate and simplify inspections of sewage treatment  
 4710 plants and coordinate the scheduling of the inspections. The new format shall ensure that all sewage treatment

4711 plants are inspected at appropriate intervals in order to protect water quality and public health and at the same  
4712 time avoid any unnecessary administrative burden on those being inspected.

4713 (7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing of  
4714 reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to procedure; and  
4715 to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such  
4716 means as the Board may prescribe.

4717 (8a) Except as otherwise provided in Articles 2.4 (§ 62.1-44.15:51 et seq.) and 2.5 (§ 62.1-44.15:67 et  
4718 seq.), to issue special orders to owners who (i) are permitting or causing the pollution, as defined by § 62.1-  
4719 44.3, of state waters to cease and desist from such pollution, (ii) have failed to construct facilities in  
4720 accordance with final approved plans and specifications to construct such facilities in accordance with final  
4721 approved plans and specifications, (iii) have violated the terms and provisions of a certificate issued by the  
4722 Board to comply with such terms and provisions, (iv) have failed to comply with a directive from the Board  
4723 to comply with such directive, (v) have contravened duly adopted and promulgated water quality standards  
4724 and policies to cease and desist from such contravention and to comply with such water quality standards and  
4725 policies, (vi) have violated the terms and provisions of a pretreatment permit issued by the Board or by the  
4726 owner of a publicly owned treatment works to comply with such terms and provisions or (vii) have  
4727 contravened any applicable pretreatment standard or requirement to comply with such standard or  
4728 requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter  
4729 and any decision of the Board. Except as otherwise provided by a separate article, orders issued pursuant to  
4730 this subdivision may include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order.  
4731 The Board may assess penalties under this subdivision if (a) the person has been issued at least two written  
4732 notices of alleged violation by the Department for the same or substantially related violations at the same site,  
4733 (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by  
4734 the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first  
4735 notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing  
4736 conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based  
4737 upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance  
4738 history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the  
4739 person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty  
4740 prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this  
4741 subdivision. The issuance of a notice of alleged violation by the Department shall not be considered a case  
4742 decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each  
4743 violation, the specific provision of law violated, and information on the process for obtaining a final decision  
4744 or fact finding from the Department on whether or not a violation has occurred, and nothing in this section  
4745 shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state  
4746 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§  
4747 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or  
4748 Article 11 (§ 62.1-44.34:14 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in  
4749 accordance with § 62.1-44.34:11, and except that civil penalties assessed for violations of Article 2.3 (§ 62.1-  
4750 44.15:24 et seq.) shall be paid in accordance with the provisions of § 62.1-44.15:48.

4751 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the  
4752 Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the Board  
4753 with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and they shall  
4754 become effective not less than 15 days after service as provided in § 62.1-44.12; provided that if the Board  
4755 finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public  
4756 health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii)  
4757 recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance  
4758 notice or hearing, an emergency special order directing the owner to cease such pollution or discharge  
4759 immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place  
4760 thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an owner who has  
4761 been issued such a special order or an emergency special order is not complying with the terms thereof, the  
4762 Board may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an  
4763 imminent and substantial danger, the court shall issue an injunction compelling compliance with the  
4764 emergency special order pending a hearing by the Board. If an emergency special order requires cessation of  
4765 a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the  
4766 injunction.

4767 (8c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32  
4768 for any past violation or violations of any provision of this chapter or any regulation duly promulgated  
4769 hereunder.

4770 (8d) With the consent of any owner who has violated or failed, neglected or refused to obey any  
4771 regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board may

4772 provide, in an order issued by the Board against such person, for the payment of civil charges for past  
 4773 violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges shall be  
 4774 instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and shall not be  
 4775 subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by  
 4776 the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.),  
 4777 excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et  
 4778 seq.) of Chapter 3.1, or a regulation, administrative or judicial order, or term or condition of approval relating  
 4779 to or issued under those articles, or civil charges assessed for violations of Article 2.3 (§ 62.1-44.15:24 et  
 4780 seq.), or a regulation, administrative or judicial order, or term or condition of approval relating to or issued  
 4781 under that article.

4782 The amendments to this section adopted by the 1976 Session of the General Assembly shall not be  
 4783 construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to  
 4784 the effective date of said amendments.

4785 (8e) The Board shall develop and provide an opportunity for public comment on guidelines and  
 4786 procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon  
 4787 the severity of the violations, the extent of any potential or actual environmental harm, the compliance history  
 4788 of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person  
 4789 to pay the penalty.

4790 (8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without an  
 4791 assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent or  
 4792 minimize overflows of sewage from such system, the Board shall provide public notice of and reasonable  
 4793 opportunity to comment on the proposed order. Any such order under subdivision (8d) may impose civil  
 4794 penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water Act, 33 U.S.C. §  
 4795 1251 et seq. Any person who comments on the proposed order shall be given notice of any hearing to be held  
 4796 on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be heard  
 4797 and to present evidence. If no hearing is held before issuance of an order under subdivision (8d), any person  
 4798 who commented on the proposed order may file a petition, within 30 days after the issuance of such order,  
 4799 requesting the Board to set aside such order and provide a formal hearing thereon. If the evidence presented  
 4800 by the petitioner in support of the petition is material and was not considered in the issuance of the order, the  
 4801 Board shall immediately set aside the order, provide a formal hearing, and make such petitioner a party. If the  
 4802 Board denies the petition, the Board shall provide notice to the petitioner and make available to the public the  
 4803 reasons for such denial, and the petitioner shall have the right to judicial review of such decision under §  
 4804 62.1-44.29 if he meets the requirements thereof.

4805 (8g) To issue special orders for violations of this chapter to persons constructing or operating any natural  
 4806 gas transmission pipeline greater than 36 inches inside diameter. An order issued pursuant to this subdivision  
 4807 may include a civil penalty of up to \$50,000 per violation, not to exceed \$500,000 per order. The Board may  
 4808 assess a penalty under this subdivision if (i) the person has been issued at least two written notices of alleged  
 4809 violation by the Department for violations involving the same pipeline; (ii) such violations have not been  
 4810 resolved by a demonstration that there was no violation, by an order issued by the Board or the Director,  
 4811 including an order pursuant to subdivision (8d), or by other means; and (iii) there is a finding that such  
 4812 violation occurred after a hearing was conducted (a) before a hearing officer appointed by the Supreme Court,  
 4813 (b) in accordance with § 2.2-4020, and (c) with at least 30 days' notice to such person of the time, place, and  
 4814 purpose thereof. Such order shall become effective not less than 15 days after service as provided in § 62.1-  
 4815 44.12. The actual amount of any penalty assessed shall be based upon the severity of the violation, the extent  
 4816 of any potential or actual environmental harm, the compliance history of the person, any economic benefit  
 4817 realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the  
 4818 person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an  
 4819 order that assesses penalties pursuant to this subdivision. The issuance of a notice of alleged violation by the  
 4820 Department shall not be a case decision as defined in § 2.2-4001. Any notice of alleged violation shall  
 4821 include a description of each violation, the specific provision of law violated, and information on the process  
 4822 for obtaining a final decision or fact-finding from the Department on whether or not a violation has occurred,  
 4823 and nothing in this subdivision shall preclude a person from seeking such a determination. Such civil  
 4824 penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia  
 4825 Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for  
 4826 violations of Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.) shall be paid into the state  
 4827 treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund (§ 62.1-  
 4828 44.15:29).

4829 (9) To make such rulings under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 as may be required upon  
 4830 requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as  
 4831 practicable after the Board makes them and such rulings to become effective upon such notification.

4832 (10) To adopt such regulations as it deems necessary to enforce the general water quality management

4833 program of the Board in all or part of the Commonwealth, except that a description of provisions of any  
4834 proposed regulation which are more restrictive than applicable federal requirements, together with the reason  
4835 why the more restrictive provisions are needed, shall be provided to the standing committee of each house of  
4836 the General Assembly to which matters relating to the content of the regulation are most properly referable.

4837 (11) To investigate any large-scale killing of fish.

4838 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a  
4839 certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in  
4840 such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement  
4841 with the owner as will cover the costs incurred by the Board and by the Department of Wildlife Resources in  
4842 investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and  
4843 if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to  
4844 bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court  
4845 or other legal costs incurred in connection with such action.

4846 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any circuit  
4847 court within the territory embraced by such political subdivision. If the owner is an establishment, as defined  
4848 in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in  
4849 which such establishment is located. If the owner is an individual or group of individuals, the action shall be  
4850 brought in the circuit court of the city or circuit court of the county in which such person or any of them  
4851 reside.

4852 (c) For the purposes of this subdivision 11, the ~~State Water Control~~ Board of Environmental Resources  
4853 shall be deemed the owner of the fish killed and the proceedings shall be as though the ~~State Water Control~~  
4854 Board of Environmental Resources were the owner of the fish. The fact that the owner has or held a  
4855 certificate issued under this chapter shall not be raised as a defense in bar to any such action.

4856 (d) The proceeds of any recovery had under this subdivision 11 shall, when received by the Board, be  
4857 applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The  
4858 balance shall be paid to the Board of Wildlife Resources to be used for the fisheries' management practices as  
4859 in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste,  
4860 including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any  
4861 such funds received are hereby appropriated for that purpose.

4862 (e) Nothing in this subdivision 11 shall be construed in any way to limit or prevent any other action which  
4863 is now authorized by law by the Board against any owner.

4864 (f) Notwithstanding the foregoing, the provisions of this subdivision 11 shall not apply to any owner who  
4865 adds or applies any chemicals or other substances that are recommended or approved by the State Department  
4866 of Health to state waters in the course of processing or treating such waters for public water supply purposes,  
4867 except where negligence is shown.

4868 (12) To administer programs of financial assistance for planning, construction, operation, and  
4869 maintenance of water quality control facilities for political subdivisions in the Commonwealth.

4870 (13) To establish policies and programs for effective area-wide or basin-wide water quality control and  
4871 management. The Board may develop comprehensive pollution abatement and water quality control plans on  
4872 an area-wide or basin-wide basis. In conjunction with this, the Board, when considering proposals for waste  
4873 treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that  
4874 the approval of waste treatment facilities is in accordance with the water quality management and pollution  
4875 control plan in the watershed or basin as a whole. In making such determinations, the Board is to seek the  
4876 advice of local, regional, or state planning authorities.

4877 (14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that are  
4878 consistent with the purposes of this chapter; however, no treatment shall be less than secondary or its  
4879 equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes  
4880 of this chapter.

4881 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are  
4882 protective of state waters and public health as an alternative to directly discharging pollutants into waters of  
4883 the state. The requirements shall address various potential categories of reuse and may include general  
4884 permits and provide for greater flexibility and less stringent requirements commensurate with the quality of  
4885 the reclaimed water and its intended use. The requirements shall be developed in consultation with the  
4886 Department of Health and other appropriate state agencies. This authority shall not be construed as conferring  
4887 upon the Board any power or duty duplicative of those of the State Board of Health.

4888 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's  
4889 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland acreage  
4890 and functions. Voluntary and incentive-based programs shall be developed to achieve a net resource gain in  
4891 acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia  
4892 Institute of Marine Science in implementing these policies and programs.

4893 (17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to §§



4894 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water resources  
 4895 between major river basins within the Commonwealth that may impact water basins in another state. Such  
 4896 additional procedures shall not apply to any water withdrawal in existence as of July 1, 2012, except where  
 4897 the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and 62.1-44.15:22, in which  
 4898 event such additional procedures may apply to the extent of the expanded withdrawal only. The applicant  
 4899 shall provide as part of the application (i) an analysis of alternatives to such a transfer, (ii) a comprehensive  
 4900 analysis of the impacts that would occur in the source and receiving basins, (iii) a description of measures to  
 4901 mitigate any adverse impacts that may arise, (iv) a description of how notice shall be provided to interested  
 4902 parties, and (v) any other requirements that the Board may adopt that are consistent with the provisions of this  
 4903 section and §§ 62.1-44.15:20 and 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not  
 4904 be construed as limiting or expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to  
 4905 issue permits and impose conditions or limitations on the permitted activity.

4906 (18) To be the lead agency for the Commonwealth's nonpoint source pollution management program,  
 4907 including coordination of the nonpoint source control elements of programs developed pursuant to certain  
 4908 state and federal laws, including § 319 of the federal Clean Water Act, *33 U.S.C. § 1251 et seq.* and § 6217 of  
 4909 the federal Coastal Zone Management Act. Further responsibilities include the adoption of regulations  
 4910 necessary to implement a nonpoint source pollution management program in the Commonwealth, the  
 4911 distribution of assigned funds, the identification and establishment of priorities to address nonpoint source  
 4912 related water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee,  
 4913 and the development of a program for the prevention and control of soil erosion, sediment deposition, and  
 4914 nonagricultural runoff to conserve Virginia's natural resources.

4915 **§ 62.1-44.15. (Effective July 1, 2024) Powers and duties; civil penalties.**

4916 It shall be the duty of the Board and it shall have the authority:

4917 (1) [Repealed.]

4918 (2) To study and investigate all problems concerned with the quality of state waters and to make reports  
 4919 and recommendations.

4920 (2a) To study and investigate methods, procedures, devices, appliances, and technologies that could assist  
 4921 in water conservation or water consumption reduction.

4922 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or without  
 4923 the Commonwealth.

4924 (2c) To make reports concerning, and formulate recommendations based upon, any such water  
 4925 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are  
 4926 met.

4927 (3a) To establish such standards of quality and policies for any state waters consistent with the general  
 4928 policy set forth in this chapter, and to modify, amend, or cancel any such standards or policies established and  
 4929 to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or  
 4930 policies thus established, except that a description of provisions of any proposed standard or policy adopted  
 4931 by regulation which are more restrictive than applicable federal requirements, together with the reason why  
 4932 the more restrictive provisions are needed, shall be provided to the standing committee of each house of the  
 4933 General Assembly to which matters relating to the content of the standard or policy are most properly  
 4934 referable. The Board shall, from time to time, but at least once every three years, hold public hearings  
 4935 pursuant to § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings  
 4936 pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting,  
 4937 modifying, or canceling such standards. Whenever the Board considers the adoption, modification,  
 4938 amendment, or cancellation of any standard, it shall give due consideration to, among other factors, the  
 4939 economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the  
 4940 standards as adopted, modified, amended, or cancelled. The Board shall also give due consideration to the  
 4941 public health standards issued by the Virginia Department of Health with respect to issues of public health  
 4942 policy and protection. If the Board does not follow the public health standards of the Virginia Department of  
 4943 Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned  
 4944 parties.

4945 (3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified,  
 4946 amended, or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000 et seq.).

4947 (4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover  
 4948 methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may  
 4949 cooperate with any public or private agency in the conduct of such experiments, investigations, and research  
 4950 and may receive in behalf of the Commonwealth any moneys that any such agency may contribute as its  
 4951 share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for  
 4952 which they are contributed and any balance remaining after the conclusion of the experiments, investigations,  
 4953 studies, and research, shall be returned to the contributors.

4954 (5) To issue, revoke, or amend certificates and land-disturbance approvals under prescribed conditions for

4955 (a) the discharge of sewage, stormwater, industrial wastes, and other wastes into or adjacent to state waters;  
4956 (b) the alteration otherwise of the physical, chemical, or biological properties of state waters; (c) excavation  
4957 in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new  
4958 activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii)  
4959 filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant  
4960 alteration or degradation of existing wetland acreage or functions. However, to the extent allowed by federal  
4961 law, any person holding a certificate issued by the Board that is intending to upgrade the permitted facility by  
4962 installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction  
4963 of the Director will result in improved energy efficiency, reduction in the amount of nutrients discharged, and  
4964 improved water quality shall not be required to obtain a new, modified, or amended permit. The permit  
4965 holder shall provide the demonstration anticipated by this subdivision to the Department no later than 30 days  
4966 prior to commencing construction.

4967 (5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia  
4968 Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water  
4969 Protection Permit shall be based upon the projected duration of the project, the length of any required  
4970 monitoring, or other project operations or permit conditions; however, the term shall not exceed 15 years. The  
4971 term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia  
4972 Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of  
4973 Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been  
4974 issued to ensure compliance with statutory, regulatory, and permit requirements. Department personnel  
4975 performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient  
4976 management training and certification program established in § 10.1-104.2. The term of a certificate issued  
4977 by the Board shall not be extended by modification beyond the maximum duration and the certificate shall  
4978 expire at the end of the term unless an application for a new permit has been timely filed as required by the  
4979 regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit  
4980 before the expiration date of the previous permit.

4981 (5b) Any certificate or land-disturbance approval issued by the Board under this chapter may, after notice  
4982 and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as  
4983 may be provided by the regulations of the Board:

4984 1. The owner has violated any regulation or order of the Board, any condition of a certificate or land-  
4985 disturbance approval, any provision of this chapter, or any order of a court, where such violation results in a  
4986 release of harmful substances into the environment, poses a substantial threat of release of harmful substances  
4987 into the environment, causes unreasonable property degradation, or presents a hazard to human health or the  
4988 violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board,  
4989 demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or  
4990 requirements;

4991 2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in  
4992 applying for a certificate or land-disturbance approval, or in any other report or document required under this  
4993 law or under the regulations of the Board;

4994 3. The activity for which the certificate or land-disturbance approval was issued endangers human health  
4995 or the environment or causes unreasonable property degradation and can be regulated to acceptable levels or  
4996 practices by amendment or revocation of the certificate or land-disturbance approval; or

4997 4. There exists a material change in the basis on which the certificate, land-disturbance approval, or  
4998 permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge  
4999 or land-disturbing activity controlled by the certificate, land-disturbance approval, or permit necessary to  
5000 protect human health or the environment or stop or prevent unreasonable degradation of property.

5001 (5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under  
5002 Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a  
5003 demonstration of financial responsibility for the completion of compensatory mitigation requirements.  
5004 Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit, or a performance  
5005 bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration  
5006 of financial responsibility for the completion of compensatory mitigation required for a particular project,  
5007 then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this  
5008 requirement.

5009 (6) To make investigations and inspections, to ensure compliance with the conditions of any certificates,  
5010 land-disturbance approvals, standards, policies, rules, regulations, rulings, and orders that it may adopt, issue,  
5011 or establish, and to furnish advice, recommendations, or instructions for the purpose of obtaining such  
5012 compliance. In recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health  
5013 shall enter into a memorandum of understanding establishing a common format to consolidate and simplify  
5014 inspections of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall  
5015 ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water quality

5016 and public health and at the same time avoid any unnecessary administrative burden on those being inspected.  
 5017 (7) To adopt rules governing the procedure of the Board with respect to (a) hearings; (b) the filing of  
 5018 reports; (c) the issuance of certificates and orders; and (d) all other matters relating to procedure; and to  
 5019 amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such  
 5020 means as the Board may prescribe.

5021 (8a) Except as otherwise provided in subdivision (19) and Article 2.3 (§ 62.1-44.15:24 et seq.), to issue  
 5022 special orders to owners, including owners as defined in § 62.1-44.15:24, who (i) are permitting or causing  
 5023 the pollution, as defined by § 62.1-44.3, of state waters or the unreasonable degradation of property to cease  
 5024 and desist from such pollution or degradation, (ii) have failed to construct facilities in accordance with final  
 5025 approved plans and specifications to construct such facilities in accordance with final approved plans and  
 5026 specifications, (iii) have violated the terms and provisions of a certificate or land-disturbance approval issued  
 5027 by the Board to comply with such terms and provisions, (iv) have failed to comply with a directive from the  
 5028 Board to comply with such directive, (v) have contravened duly adopted and promulgated water quality  
 5029 standards and policies to cease and desist from such contravention and to comply with such water quality  
 5030 standards and policies, (vi) have violated the terms and provisions of a pretreatment permit issued by the  
 5031 Board or by the owner of a publicly owned treatment works to comply with such terms and provisions, or  
 5032 (vii) have contravened any applicable pretreatment standard or requirement to comply with such standard or  
 5033 requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter  
 5034 and any decision of the Board. Except as otherwise provided by a separate article, orders issued pursuant to  
 5035 this subdivision may include civil penalties of up to \$ 32,500 per violation, not to exceed \$ 100,000 per order.  
 5036 The Board may assess penalties under this subdivision if (a) the person has been issued at least two written  
 5037 notices of alleged violation by the Department for the same or substantially related violations at the same site,  
 5038 (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by  
 5039 the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first  
 5040 notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing  
 5041 conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based  
 5042 upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance  
 5043 history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the  
 5044 person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty  
 5045 prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this  
 5046 subdivision. The issuance of a notice of alleged violation by the Department shall not be considered a case  
 5047 decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each  
 5048 violation, the specific provision of law violated, and information on the process for obtaining a final decision  
 5049 or fact finding from the Department on whether or not a violation has occurred, and nothing in this section  
 5050 shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state  
 5051 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§  
 5052 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or  
 5053 Article 11 (§ 62.1-44.34:14 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in  
 5054 accordance with § 62.1-44.34:11, and except that civil penalties assessed for violations of subdivision (19) or  
 5055 Article 2.3 (§ 62.1-44.15:24 et seq.) shall be paid into the Stormwater Local Assistance Fund in accordance  
 5056 with § 62.1-44.15:29.1.

5057 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the  
 5058 Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the Board  
 5059 with at least 30 days' notice to the affected owners, of the time, place, and purpose thereof, and they shall  
 5060 become effective not less than 15 days after service as provided in 62.1-44.12, provided that if the Board  
 5061 finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public  
 5062 health, safety, or welfare, or the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii)  
 5063 recreational, commercial, industrial, agricultural, or other reasonable uses, it may issue, without advance  
 5064 notice or hearing, an emergency special order directing the owner to cease such pollution or discharge  
 5065 immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place  
 5066 thereof to the owner, to affirm, modify, amend, or cancel such emergency special order. If an owner who has  
 5067 been issued such a special order or an emergency special order is not complying with the terms thereof, the  
 5068 Board may proceed in accordance with 62.1-44.23, and where the order is based on a finding of an imminent  
 5069 and substantial danger, the court shall issue an injunction compelling compliance with the emergency special  
 5070 order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the  
 5071 Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

5072 (8c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32  
 5073 for any past violation or violations of any provision of this chapter or any regulation duly promulgated  
 5074 hereunder.

5075 (8d) Except as otherwise provided in subdivision (19), subdivision 2 of § 62.1-44.15:25, or § 62.1-  
 5076 44.15:63, with the consent of any owner who has violated or failed, neglected, or refused to obey any

5077 regulation or order of the Board, any condition of a certificate, land-disturbance approval, or permit, or any  
5078 provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the  
5079 payment of civil charges for past violations in specific sums not to exceed the limit specified in subsection (a)  
5080 of § 62.1-44.32. Such civil charges shall be instead of any appropriate civil penalty which could be imposed  
5081 under subsection (a) of § 62.1-44.32 and shall not be subject to the provisions of § 2.2-514. Such civil  
5082 charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia  
5083 Environmental Emergency Response Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for  
5084 violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1, or a regulation,  
5085 administrative or judicial order, or term or condition of approval relating to or issued under those articles, or  
5086 civil charges assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.5 (§ 62.1-44.15:67 et seq.) or  
5087 a regulation, administrative or judicial order, or term or condition of approval relating to or issued under  
5088 Article 2.3 or 2.5.

5089 The amendments to this section adopted by the 1976 Session of the General Assembly shall not be  
5090 construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to  
5091 the effective date of said amendments.

5092 (8e) The Board shall develop and provide an opportunity for public comment on guidelines and  
5093 procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon  
5094 the severity of the violations, the extent of any potential or actual environmental harm, the compliance history  
5095 of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person  
5096 to pay the penalty.

5097 (8f) Before issuing a special order under subdivision (8a) or by consent under *subdivision* (8d), with or  
5098 without an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to  
5099 prevent or minimize overflows of sewage from such system, the Board shall provide public notice of and  
5100 reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may  
5101 impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water Act,  
5102 *33 U.S.C. § 1251 et seq.* Any person who comments on the proposed order shall be given notice of any  
5103 hearing to be held on the terms of the order. In any hearing held, such person shall have a reasonable  
5104 opportunity to be heard and to present evidence. If no hearing is held before issuance of an order under  
5105 subdivision (8d), any person who commented on the proposed order may file a petition, within 30 days after  
5106 the issuance of such order, requesting the Board to set aside such order and provide a formal hearing thereon.  
5107 If the evidence presented by the petitioner in support of the petition is material and was not considered in the  
5108 issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and make  
5109 such petitioner a party. If the Board denies the petition, the Board shall provide notice to the petitioner and  
5110 make available to the public the reasons for such denial, and the petitioner shall have the right to judicial  
5111 review of such decision under § 62.1-44.29 if he meets the requirements thereof.

5112 (8g) To issue special orders for violations of this chapter to persons constructing or operating any natural  
5113 gas transmission pipeline greater than 36 inches inside diameter. An order issued pursuant to this subdivision  
5114 may include a civil penalty of up to \$50,000 per violation, not to exceed \$500,000 per order. The Board may  
5115 assess a penalty under this subdivision if (i) the person has been issued at least two written notices of alleged  
5116 violation by the Department for violations involving the same pipeline; (ii) such violations have not been  
5117 resolved by a demonstration that there was no violation, by an order issued by the Board or the Director,  
5118 including an order pursuant to subdivision (8d), or by other means; and (iii) there is a finding that such  
5119 violation occurred after a hearing was conducted (a) before a hearing officer appointed by the Supreme Court,  
5120 (b) in accordance with § 2.2-4020, and (c) with at least 30 days' notice to such person of the time, place, and  
5121 purpose thereof. Such order shall become effective not less than 15 days after service as provided in § 62.1-  
5122 44.12. The actual amount of any penalty assessed shall be based upon the severity of the violation, the extent  
5123 of any potential or actual environmental harm, the compliance history of the person, any economic benefit  
5124 realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the  
5125 person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an  
5126 order that assesses penalties pursuant to this subdivision. The issuance of a notice of alleged violation by the  
5127 Department shall not be a case decision as defined in § 2.2-4001. Any notice of alleged violation shall  
5128 include a description of each violation, the specific provision of law violated, and information on the process  
5129 for obtaining a final decision or fact-finding from the Department on whether or not a violation has occurred,  
5130 and nothing in this subdivision shall preclude a person from seeking such a determination. Such civil  
5131 penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia  
5132 Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for  
5133 violations of Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.) shall be paid into the state  
5134 treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund (§ 62.1-  
5135 44.15:29).

5136 (9) To make such rulings under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 as may be required upon  
5137 requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as

5138 practicable after the Board makes them and such rulings to become effective upon such notification.

5139 (10) To adopt such regulations as it deems necessary to enforce the general soil erosion control and  
5140 stormwater management program and water quality management program of the Board in all or part of the  
5141 Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive  
5142 than applicable federal requirements, together with the reason why the more restrictive provisions are needed,  
5143 shall be provided to the standing committee of each house of the General Assembly to which matters relating  
5144 to the content of the regulation are most properly referable.

5145 (11) To investigate any large-scale killing of fish.

5146 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a  
5147 certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in  
5148 such quantity, concentration, or manner that fish are killed as a result thereof, it may effect such settlement  
5149 with the owner as will cover the costs incurred by the Board and by the Department of Wildlife Resources in  
5150 investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and  
5151 if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to  
5152 bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court  
5153 or other legal costs incurred in connection with such action.

5154 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any circuit  
5155 court within the territory embraced by such political subdivision. If the owner is an establishment, as defined  
5156 in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in  
5157 which such establishment is located. If the owner is an individual or group of individuals, the action shall be  
5158 brought in the circuit court of the city or circuit court of the county in which such person or any of them  
5159 reside.

5160 (c) For the purposes of this subdivision (11), the ~~State Water Control~~ *Board of Environmental Resources*  
5161 shall be deemed the owner of the fish killed and the proceedings shall be as though the ~~State Water Control~~  
5162 *Board of Environmental Resources* were the owner of the fish. The fact that the owner has or held a  
5163 certificate issued under this chapter shall not be raised as a defense in bar to any such action.

5164 (d) The proceeds of any recovery had under this subdivision (11) shall, when received by the Board, be  
5165 applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The  
5166 balance shall be paid to the Board of Wildlife Resources to be used for the fisheries' management practices as  
5167 in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste,  
5168 including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any  
5169 such funds received are hereby appropriated for that purpose.

5170 (e) Nothing in this subdivision (11) shall be construed in any way to limit or prevent any other action  
5171 which is now authorized by law by the Board against any owner.

5172 (f) Notwithstanding the foregoing, the provisions of this subdivision (11) shall not apply to any owner  
5173 who adds or applies any chemicals or other substances that are recommended or approved by the State  
5174 Department of Health to state waters in the course of processing or treating such waters for public water  
5175 supply purposes, except where negligence is shown.

5176 (12) To administer programs of financial assistance for planning, construction, operation, and  
5177 maintenance of water quality control facilities for political subdivisions in the Commonwealth.

5178 (13) To establish policies and programs for effective area-wide or basin-wide water quality control and  
5179 management. The Board may develop comprehensive pollution abatement and water quality control plans on  
5180 an area-wide or basin-wide basis. In conjunction with this, the Board, when considering proposals for waste  
5181 treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that  
5182 the approval of waste treatment facilities is in accordance with the water quality management and pollution  
5183 control plan in the watershed or basin as a whole. In making such determinations, the Board is to seek the  
5184 advice of local, regional, or state planning authorities.

5185 (14) To establish requirements for the treatment of sewage, industrial wastes, and other wastes that are  
5186 consistent with the purposes of this chapter; however, no treatment shall be less than secondary or its  
5187 equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes  
5188 of this chapter.

5189 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are  
5190 protective of state waters and public health as an alternative to directly discharging pollutants into waters of  
5191 the state. The requirements shall address various potential categories of reuse and may include general  
5192 permits and provide for greater flexibility and less stringent requirements commensurate with the quality of  
5193 the reclaimed water and its intended use. The requirements shall be developed in consultation with the  
5194 Department of Health and other appropriate state agencies. This authority shall not be construed as conferring  
5195 upon the Board any power or duty duplicative of those of the State Board of Health.

5196 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's  
5197 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland acreage  
5198 and functions. Voluntary and incentive-based programs shall be developed to achieve a net resource gain in

5199 acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia  
 5200 Institute of Marine Science in implementing these policies and programs.

5201 (17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to §§  
 5202 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water resources  
 5203 between major river basins within the Commonwealth that may impact water basins in another state. Such  
 5204 additional procedures shall not apply to any water withdrawal in existence as of July 1, 2012, except where  
 5205 the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and 62.1-44.15:22, in which  
 5206 event such additional procedures may apply to the extent of the expanded withdrawal only. The applicant  
 5207 shall provide as part of the application (i) an analysis of alternatives to such a transfer, (ii) a comprehensive  
 5208 analysis of the impacts that would occur in the source and receiving basins, (iii) a description of measures to  
 5209 mitigate any adverse impacts that may arise, (iv) a description of how notice shall be provided to interested  
 5210 parties, and (v) any other requirements that the Board may adopt that are consistent with the provisions of this  
 5211 section and §§ 62.1-44.15:20 and 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not  
 5212 be construed as limiting or expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to  
 5213 issue permits and impose conditions or limitations on the permitted activity.

5214 (18) To be the lead agency for the Commonwealth's nonpoint source pollution management program,  
 5215 including coordination of the nonpoint source control elements of programs developed pursuant to certain  
 5216 state and federal laws, including § 319 of the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* and § 6217 of  
 5217 the federal Coastal Zone Management Act. Further responsibilities include the adoption of regulations  
 5218 necessary to implement a nonpoint source pollution management program in the Commonwealth, the  
 5219 distribution of assigned funds, the identification and establishment of priorities to address nonpoint source  
 5220 related water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee,  
 5221 and the development of a program for the prevention and control of soil erosion, sediment deposition, and  
 5222 nonagricultural runoff to conserve Virginia's natural resources.

5223 (19) To review for compliance with the provisions of this chapter the Virginia Erosion and Stormwater  
 5224 Management Programs adopted by localities pursuant to § 62.1-44.15:27, the Virginia Erosion and Sediment  
 5225 Control Programs adopted by localities pursuant to subdivision B 3 of § 62.1-44.15:27, and the programs  
 5226 adopted by localities pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 *et seq.*). The Board  
 5227 shall develop and implement a schedule for conducting such program reviews as often as necessary but at  
 5228 least once every five years. Following the completion of a compliance review in which deficiencies are  
 5229 found, the Board shall establish a schedule for the locality to follow in correcting the deficiencies and  
 5230 bringing its program into compliance. If the locality fails to bring its program into compliance in accordance  
 5231 with the compliance schedule, then the Board is authorized to (i) issue a special order to any locality  
 5232 imposing a civil penalty not to exceed \$ 5,000 per violation with the maximum amount not to exceed \$  
 5233 50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in  
 5234 the Stormwater Local Assistance Fund established in § 62.1-44.15:29.1 or (ii) with the consent of the locality,  
 5235 provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil  
 5236 penalties, in specific sums not to exceed the limit stated in this subdivision. Such civil charges shall be in lieu  
 5237 of any appropriate civil penalty that could be imposed under subsection (a) of § 62.1-44.32 and shall not be  
 5238 subject to the provisions of § 2.2-514. The Board shall not delegate to the Department its authority to issue  
 5239 special orders pursuant to clause (i). In lieu of issuing an order, the Board is authorized to take legal action  
 5240 against a locality pursuant to § 62.1-44.23 to ensure compliance.

5241 **§ 62.1-44.15:6. Permit fee regulations.**

5242 A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover  
 5243 a portion of the ~~State Water Control Board's~~ *Board of Environmental Resources'*, the Department of Wildlife  
 5244 Resources', and the Department of Conservation and Recreation's direct and indirect costs associated with the  
 5245 processing of an application to issue, reissue, amend, or modify any permit or certificate, which the Board has  
 5246 authority to issue under this chapter and Chapters 24 (§ 62.1-242 *et seq.*) and 25 (§ 62.1-254 *et seq.*) ~~of this~~  
 5247 ~~title~~, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously  
 5248 processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the  
 5249 Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue  
 5250 such permits has been delegated to another agency that imposes permit fees.

5251 B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a  
 5252 Virginia Pollution Abatement permit shall reflect the average time and complexity of processing a permit in  
 5253 each of the various categories of permits and permit actions. However, notwithstanding any other provision  
 5254 of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in  
 5255 production for market or for a permit pertaining to maintenance dredging for federal navigation channels or  
 5256 other Corps of Engineers- ~~Engineers-~~ *Engineers-sponsored* or Department of the Navy-sponsored dredging projects or  
 5257 for the regularly scheduled renewal of an individual permit for an existing facility. Fees shall be charged for a  
 5258 major modification or reissuance of a permit initiated by the permittee that occurs between permit issuance  
 5259 and the stated expiration date. No fees shall be charged for a modification or amendment made at the Board's

5260 initiative. In no instance shall the Board exceed the following amounts for the processing of each type of  
 5261 permit/certificate category:

5262	Type of Permit/Certificate Category	Maximum Amount
5263	1. Virginia Pollutant Discharge Elimination System	
5264	Major Industrial	\$24,000
5265	Major Municipal	\$21,300
5266	Minor Industrial with nonstandard limits	\$10,300
5267	Minor Industrial with standard limits	\$6,600
5268	Minor Municipal greater than 100,000 gallons per day	\$7,500
5269	Minor Municipal 10,001-100,000 gallons per day	\$6,000
5270	Minor Municipal 1,000-10,000 gallons per day	\$5,400
5271	Minor Municipal less than 1,000 gallons per day	\$2,000
5272	General-industrial stormwater management	\$500
5273	General-stormwater management-phase I land clearing	\$500
5274	General-stormwater management-phase II land clearing	\$300
5275	General-other	\$600
5276	2. Virginia Pollution Abatement	
5277	Industrial/Wastewater 10 or more inches per year	\$15,000
5278	Industrial/Wastewater less than 10 inches per year	\$10,500
5279	Industrial/Sludge	\$7,500
5280	Municipal/Wastewater	\$13,500
5281	Municipal/Sludge	\$7,500
5282	General Permit	\$600
5283	Other	\$750

5284 The fee for the major modification of a permit or certificate that occurs between the permit issuance and  
 5285 expiration dates shall be 50 percent of the maximum amount established by this subsection. No fees shall be  
 5286 charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision,  
 5287 "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are  
 5288 made to keep the permit current with routine changes to the facility or its operation that do not require  
 5289 extensive review. A minor permit modification or amendment does not substantially alter permit conditions,  
 5290 increase the size of the operation, or reduce the capacity of the facility to protect human health or the  
 5291 environment.

5292 B2. Each permitted facility shall pay a permit maintenance fee to the Board by October 1 of each year, not  
 5293 to exceed the following amounts:

5294	Type of Permit/Certificate Category	Maximum Amount
5295	1. Virginia Pollutant Discharge Elimination System	
5296	Major Industrial	\$4,800
5297	Major Municipal greater than 10 million gallons per day	\$4,750
5298	Major Municipal 2-10 million gallons per day	\$4,350
5299	Major Municipal less than 2 million gallons per day	\$3,850
5300	Minor Industrial with nonstandard limits	\$2,040
5301	Minor Industrial with standard limits	\$1,320
5302	Minor Industrial water treatment system	\$1,200
5303	Minor Municipal greater than 100,000 gallons per day	\$1,500
5304	Minor Municipal 10,001-100,000 gallons per day	\$1,200
5305	Minor Municipal 1,000-10,000 gallons per day	\$1,080
5306	Minor Municipal less than 1,000 gallons per day	\$400
5307	2. Virginia Pollution Abatement	
5308	Industrial/Wastewater 10 or more inches per year	\$3,000
5309	Industrial/Wastewater less than 10 inches per year	\$2,100
5310	Industrial/Sludge	\$3,000
5311	Municipal/Wastewater	\$2,700
5312	Municipal/Sludge	\$1,500

5313 An additional permit maintenance fee of \$1,000 shall be collected from facilities in a toxics management  
 5314 program and an additional permit maintenance fee shall be collected from facilities that have more than five  
 5315 process wastewater discharge outfalls. Permit maintenance fees shall be collected annually and shall be  
 5316 remitted by October 1 of each year. For a local government or public service authority with permits for

5317 multiple facilities in a single jurisdiction, the permit maintenance fees for permits held as of April 1, 2004,  
 5318 shall not exceed \$20,000 per year. No permit maintenance fee shall be assessed for facilities operating under  
 5319 a general permit or for permits pertaining to a farming operation engaged in production for market.

5320 B3. Permit application fees charged for Virginia Water Protection Permits, ground water withdrawal  
 5321 permits, and surface water withdrawal permits shall reflect the average time and complexity of processing a  
 5322 permit in each of the various categories of permits and permit actions and the size of the proposed impact.  
 5323 Only one permit fee shall be assessed for a water protection permit involving elements of more than one  
 5324 category of permit fees under this section. The fee shall be assessed based upon the primary purpose of the  
 5325 proposed activity. In no instance shall the Board charge a fee for a permit pertaining to maintenance dredging  
 5326 for federal navigation channels or other U.S. Army Corps of Engineers- or Department of the Navy-  
 5327 sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the  
 5328 processing of each type of permit/certificate category:

5329	Type of Permit	Maximum Amount
5330	1. Virginia Water Protection	
5331	Individual-wetland impacts	\$2,400 plus \$220 per 1/10 acre of impact over two
5332		acres, not to exceed \$60,000
5333	Individual-minimum instream flow	\$25,000
5334	Individual-reservoir	\$35,000
5335	Individual-nonmetallic mineral mining	\$7,500
5336	General-less than 1/10 acre impact	\$0
5337	General-1/10 to 1/2 acre impact	\$600
5338	General-greater than 1/2 to one acre impact	\$1,200
5339	General-greater than one acre to two acres of impact	\$120 per 1/10 acre of impact
5340	2. Ground Water Withdrawal	\$9,000
5341	3. Surface Water Withdrawal	\$12,000

5342 No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose  
 5343 of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined  
 5344 by the Board that are made to keep the permit current with routine changes to the facility or its operation that  
 5345 do not require extensive review. A minor permit modification or amendment does not substantially alter  
 5346 permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human  
 5347 health or the environment.

5348 C. When promulgating regulations establishing permit fees, the Board shall take into account the permit  
 5349 fees charged in neighboring states and the importance of not placing existing or prospective industries in the  
 5350 Commonwealth at a competitive disadvantage.

5351 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall  
 5352 make a report on the implementation of the water permit program to the Senate Committee on Agriculture,  
 5353 Conservation and Natural Resources, the Senate Committee on Finance and Appropriations, the House  
 5354 Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources and  
 5355 the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and  
 5356 indirect, including the costs of overhead, water quality planning, water quality assessment, operations  
 5357 coordination, and surface water and ground water investigations, (ii) the total fees collected by permit  
 5358 category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received,  
 5359 (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications  
 5360 received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit  
 5361 backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of  
 5362 administering their water permit programs, including what activities each state categorizes as direct and  
 5363 indirect costs, and the fees charged to the permit holders and applicants.

5364 E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund  
 5365 appropriation to the Board.

5366 F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional  
 5367 permits that may be required by the federal government and administered by the Board, or any new permit  
 5368 required pursuant to any law of the Commonwealth.

5369 G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for  
 5370 facilities that have established a record of compliance with the terms and requirements of their permits and  
 5371 shall establish criteria by regulation to provide for reductions in the annual fee amount assessed for facilities  
 5372 accepted into the Department's programs to recognize excellent environmental performance.

5373 **§ 62.1-44.15:7. State Water Control Permit Program Fund established; use of moneys.**

5374 A. There is hereby established a special, nonreverting fund in the state treasury to be known as the State  
 5375 Water Control Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions  
 5376 of § 2.2-1802, all moneys collected pursuant to § 62.1-44.15:6 shall be paid into the state treasury to the  
 5377 credit of the Fund.



5378 B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund.  
5379 Interest earned on such moneys shall remain in the Fund and be credited to it.

5380 C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the  
5381 State Comptroller, for the purposes of recovering portions of the costs of processing applications under this  
5382 chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) ~~of this title~~ under the direction of the  
5383 Executive Director.

5384 D. An accounting of moneys received by and distributed from the Fund shall be kept by the State  
5385 Comptroller and furnished upon request to the Governor or the General Assembly.

5386 **§ 62.1-44.15:24. (Effective until July 1, 2024) Definitions.**

5387 As used in this article, unless the context requires a different meaning:

5388 "Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and  
5389 the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a  
5390 VSMP for the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of  
5391 land with a total impervious cover percentage, including the impervious cover from the farm building or  
5392 structure to be constructed, of less than five percent; such contract may be executed by the VSMP authority in  
5393 lieu of a stormwater management plan.

5394 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including  
5395 clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet  
5396 and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to  
5397 the Chesapeake Bay Preservation provisions of this chapter.

5398 "CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal  
5399 Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as  
5400 amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or any subsequent revisions thereto.

5401 "Department" means the Department of Environmental Quality.

5402 "Director" means the Director of the Department of Environmental Quality.

5403 "Farm building or structure" means the same as that term is defined in § 36-97 and also includes any  
5404 building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious  
5405 surfaces including roads, driveways, and parking areas.

5406 "Flooding" means a volume of water that is too great to be confined within the banks or walls of the  
5407 stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or  
5408 threatening damage.

5409 "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that  
5410 potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term  
5411 shall not include those exemptions specified in § 62.1-44.15:34.

5412 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a  
5413 municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets,  
5414 catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

5415 1. Owned or operated by a federal, state, city, town, county, district, association, or other public body,  
5416 created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control  
5417 and stormwater management, or a designated and approved management agency under § 208 of the CWA  
5418 that discharges to surface waters;

5419 2. Designed or used for collecting or conveying stormwater;

5420 3. That is not a combined sewer; and

5421 4. That is not part of a publicly owned treatment works.

5422 "Municipal Separate Storm Sewer System Management Program" means a management program  
5423 covering the duration of a state permit for a municipal separate storm sewer system that includes a  
5424 comprehensive planning process that involves public participation and intergovernmental coordination, to  
5425 reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy  
5426 the appropriate water quality requirements of the CWA and regulations, and this article and its attendant  
5427 regulations, using management practices, control techniques, and system, design, and engineering methods,  
5428 and such other provisions that are appropriate.

5429 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons,  
5430 heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a  
5431 diffuse manner by stormwater runoff.

5432 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular  
5433 location.

5434 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by  
5435 the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general  
5436 permit coverage has been provided where applicable.

5437 "Permittee" means the person to which the permit or state permit is issued.

5438 "Runoff volume" means the volume of water that runs off the land development project from a prescribed

5439 storm event.

5440 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay  
5441 Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community  
5442 Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

5443 "Small construction activity" means:

5444 1. A construction activity, including clearing, grading, or excavating, that results in land disturbance of  
5445 equal to or greater than one acre and less than five acres. "Small construction activity" also includes the  
5446 disturbance of less than one acre of total land area that is part of a larger common plan of development or sale  
5447 if the larger common plan will ultimately disturb an area equal to or greater than one acre and less than five  
5448 acres. "Small construction activity" does not include routine maintenance that is performed to maintain the  
5449 original line and grade, hydraulic capacity, or original purpose of the facility.

5450 The Board may waive the otherwise applicable requirements in a general permit for a stormwater  
5451 discharge from construction activities that disturb less than five acres where stormwater controls are not  
5452 needed based on an approved total maximum daily load (TMDL) that addresses the pollutants of concern or,  
5453 for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for  
5454 small construction sites for the pollutants of concern or that determines that such allocations are not needed to  
5455 protect water quality based on consideration of existing in-stream concentrations, expected growth in  
5456 pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the  
5457 pollutants of concern include sediment or a parameter that addresses sediment, such as total suspended solids,  
5458 turbidity, or siltation, and any other pollutant that has been identified as a cause of impairment of any water  
5459 body that will receive a discharge from the construction activity. The operator shall certify to the Board that  
5460 the construction activity will take place, and that stormwater discharges will occur, within the drainage area  
5461 addressed by the TMDL or provide an equivalent analysis.

5462 As of the start date in the table of start dates for electronic submissions of Virginia Pollutant Discharge  
5463 Elimination System (VPDES) information within the regulation governing the implementation of electronic  
5464 reporting requirements for certain VPDES permittees, facilities, and entities, all certifications submitted in  
5465 support of such waiver shall be submitted electronically by the owner or operator to the Department in  
5466 compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in all cases, 40 C.F.R. Part 3 Subpart D;  
5467 (iii) the regulation addressing signatories to state permit applications and reports; and (iv) regulations  
5468 addressing the VPDES electronic reporting requirements. Such regulations addressing the VPDES electronic  
5469 reporting requirements shall not undo existing requirements for electronic reporting. Prior to such date, and  
5470 independent of the regulations addressing the VPDES electronic reporting requirements, a permittee shall be  
5471 required to report electronically if specified by a particular permit.

5472 2. Any other construction activity designated by either the Board or the Regional Administrator of the  
5473 U.S. Environmental Protection Agency, based on the potential for contribution to a violation of a water  
5474 quality standard or for significant contribution of pollutants to surface waters.

5475 "State permit" means an approval to conduct a land-disturbing activity issued by the Board in the form of  
5476 a state stormwater individual permit or coverage issued under a state general permit or an approval issued by  
5477 the Board for stormwater discharges from an MS4. Under these permits, the Commonwealth imposes and  
5478 enforces requirements pursuant to the ~~federal Clean Water Act CWA~~ and regulations and this article and its  
5479 attendant regulations.

5480 "Stormwater" means precipitation that is discharged across the land surface or through conveyances to  
5481 one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and  
5482 drainage.

5483 "Stormwater management plan" means a document containing material describing methods for complying  
5484 with the requirements of a VSMP.

5485 "Subdivision" means the same as defined in § 15.2-2201.

5486 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and  
5487 Water Conservation Board after September 13, 2011, and until June 30, 2013, or the ~~State Water Control~~  
5488 Board of *Environmental Resources* on and after June 30, 2013, that has been established by a VSMP  
5489 authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall  
5490 include such items as local ordinances, rules, permit requirements, annual standards and specifications,  
5491 policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where  
5492 authorized in this article, and evaluation consistent with the requirements of this article and associated  
5493 regulations.

5494 "Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved  
5495 by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or the  
5496 Department. An authority may include a locality; state entity, including the Department; federal entity; or, for  
5497 linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-  
5498 44.15:31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline  
5499 companies, railroad companies, or authorities created pursuant to § 15.2-5102.

5500 "Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the

5501 impervious surface of the land development project.

5502 "Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article  
5503 that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

5504 "Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting  
5505 rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the  
5506 karst feature to which water drains may be considered the single outlet for the watershed.

5507 **§ 62.1-44.36. Responsibility of Board of Environmental Resources; formulation of policy.**

5508 Being cognizant of the crucial importance of the Commonwealth's water resources to the health and  
5509 welfare of the people of Virginia and of the need of a water supply to assure further industrial growth and  
5510 economic prosperity for the Commonwealth, and recognizing the necessity for continuous cooperative  
5511 planning and effective state-level guidance in the use of water resources, the ~~State Water Control~~ Board of  
5512 *Environmental Resources* is assigned the responsibility for planning the development, conservation and  
5513 utilization of Virginia's water resources.

5514 The Board shall continue the study of existing water resources of the Commonwealth, means and methods  
5515 of conserving and augmenting such water resources, and existing and contemplated uses and needs of water  
5516 for all purposes. Based upon these studies and policies that have been initiated by the Division of Water  
5517 Resources, and after an opportunity has been given to all concerned state agencies and political subdivisions  
5518 to be heard, the Board shall formulate a coordinated policy for the use and control of all the water resources  
5519 of the Commonwealth and issue a statement thereof. In formulating the Commonwealth's water resources  
5520 policy, the Board shall, among other things, take into consideration the following principles and policies:

5521 1. Existing water rights are to be protected and preserved subject to the principle that all of the state  
5522 waters belong to the public for use by the people for beneficial purposes without waste.

5523 2. Adequate and safe supplies shall be preserved and protected for human consumption, while conserving  
5524 maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict  
5525 or when available supplies of water are insufficient for all who desire to use them, preference shall be given  
5526 to human consumption purposes over all other uses.

5527 3. It is in the public interest that integration and coordination of uses of water, especially by localities with  
5528 shared water supplies, and augmentation of existing supplies for all beneficial purposes be achieved for the  
5529 maximum economic development thereof for the benefit of the Commonwealth as a whole.

5530 4. In considering the benefits to be derived from drainage, consideration shall also be given to possible  
5531 harmful effects upon ground water supplies and protection of wildlife.

5532 5. The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be  
5533 fostered and encouraged.

5534 6. Watershed development policies shall be favored, whenever possible, for the preservation of balanced  
5535 multiple uses, and project construction and planning with those ends in view shall be encouraged.

5536 7. Due regard shall be given in the planning and development of water recreation facilities to safeguard  
5537 against pollution.

5538 The statement of water resource policy shall be revised from time to time whenever the Board determines  
5539 it to be in the public interest.

5540 The initial statement of state water resource policy and any subsequent revisions thereof shall be furnished  
5541 by the Board to all state agencies and to all political subdivisions of the Commonwealth.

5542 **§ 62.1-44.115. Review of uses by Board of Environmental Resources; report.**

5543 The ~~State Water Control~~ Board of *Environmental Resources* shall annually review the uses and  
5544 development of the waters of the Potomac River, and make such report thereon as it deems advisable to the  
5545 Governor and to the General Assembly, together with such recommendations as the Board ~~feels~~ *determines*  
5546 are necessary for the protection and full enjoyment of Virginia's riparian rights in such river.

5547 **§ 62.1-44.116. Assistance by Board of Environmental Resources in riparian disputes.**

5548 In the event non-Virginia claimants question or seek to abridge the riparian use of the waters of the  
5549 Potomac River by Virginia riparian owners, the ~~State Water Control~~ Board of *Environmental Resources* shall  
5550 advise and assist such riparian owners in the proper exercise and protection of their rights, giving due  
5551 consideration to the rights of others and to the wise use of the water, and the Board shall assist in the  
5552 resolution of conflicts concerning such rights.

5553 **§ 62.1-67. Appointment, terms, and qualifications of members; alternate members.**

5554 The Commission shall consist of three members as follows: one legislative member of the Commission on  
5555 Intergovernmental Cooperation who resides in the Potomac River drainage basin, appointed by the Joint  
5556 Rules Committee; one nonlegislative citizen member at large who resides in the Potomac River drainage  
5557 basin, appointed by the Governor; and the ~~executive director~~ *Executive Director* of the ~~State Water Control~~  
5558 Board of *Environmental Resources*. Appointments to fill vacancies shall be made for the respective unexpired  
5559 terms. One of the members shall be designated by the Governor as chairman. The Governor and the Joint  
5560 Rules Committee shall appoint alternate members for their appointees to the Commission, who shall reside in  
5561 the Potomac River drainage basin, and each alternate shall have power to act in the absence of the person for

5562 whom he is alternate. The legislative member and ~~executive director~~ *Executive Director* of the ~~State Water~~  
 5563 ~~Control Board of Environmental Resources~~ shall serve terms coincident with their terms of office and the  
 5564 member appointed by the Governor shall serve a term of four years. The terms of each alternate shall run  
 5565 concurrently with the term of the member for whom he is *an* alternate. All members may be reappointed.

5566 **§ 62.1-69. Duties of Commission; powers and duties of Board of Environmental Resources not**  
 5567 **affected; dams or structures for production of electric power.**

5568 The Potomac River Basin Commission of Virginia shall, if and when it shall come into existence as  
 5569 hereinabove provided, act jointly with commissions appointed for a like purpose by the states of West  
 5570 Virginia and Maryland, the Commonwealth of Pennsylvania and the District of Columbia, or by such of the  
 5571 same as shall enter into the compact and with an additional three members to be appointed by the President of  
 5572 the United States, as a unit of the Interstate Commission on the Potomac River Basin which shall be  
 5573 constituted as provided by the compact hereinabove mentioned. The Potomac River Basin Commission of  
 5574 Virginia shall perform such further duties as shall be provided by the compact.

5575 No provision of this chapter or application thereof shall operate to repeal, limit, affect, or impair any  
 5576 provision or application of ~~Chapter 3-1 the State Water Control Law~~ (§ 62.1-44.2 et seq.) ~~of Title 62.1~~, and  
 5577 no provision of this chapter shall have any effect upon the powers and duties of the ~~State Water Control~~  
 5578 ~~Board created by Chapter 3-1~~ (§ 62.1-44.2 et seq.) ~~of Title 62.1 of Environmental Resources~~ and the  
 5579 operation of such Board over the waters of the Commonwealth subject to its jurisdiction. Members of the  
 5580 Potomac River Basin Commission of Virginia are prohibited from voting in favor of any measure before the  
 5581 Interstate Potomac River Basin Commission ~~which~~ *that* might have any effect upon the powers and duties of  
 5582 the ~~State Water Control Board of Environmental Resources~~ without the consent of such Board first had and  
 5583 obtained. Members of the Potomac River Basin Commission of Virginia are prohibited from voting in favor  
 5584 of the construction, with public funds, of any dam or other structure upon the Potomac River or its tributaries  
 5585 in Virginia, which dam or other structure is used or is capable of being used, directly or indirectly, in whole  
 5586 or in part and whether as a single or multiple purpose, for the production by any government or any agency or  
 5587 instrumentality thereof, of electric power and energy.

5588 **§ 62.1-69.25. Definitions.**

5589 As used in this chapter, unless the context requires a different meaning:

5590 "Rappahannock River Basin" means that land area designated as the Rappahannock River Basin by the  
 5591 ~~State Water Control Board of Environmental Resources~~ pursuant to § 62.1-44.38 and which is also found in  
 5592 the Twenty-fifth, Twenty-seventh, Twenty-eighth, and Thirty-first Senatorial Districts or the Thirtieth, Sixty-  
 5593 first, Sixty-second, Sixty-third, Sixty-fourth, Sixty-fifth, Sixty-sixth, Sixty-seventh, and Sixty-eighth House  
 5594 of Delegates Districts, as those districts exist on January 1, 2024.

5595 **§ 62.1-69.36. Definitions.**

5596 As used in this chapter, unless the context requires a different meaning:

5597 "Basin" means the Roanoke River Basin.

5598 "Roanoke River Basin" means that land area designated as the Roanoke River Basin by the ~~Virginia State~~  
 5599 ~~Water Control Board of Environmental Resources~~, pursuant to § 62.1-44.38, and the North Carolina  
 5600 Department of Environment and Natural Resources.

5601 **§ 62.1-69.45. Definitions.**

5602 As used in this chapter, unless the context requires a different meaning:

5603 "Rivanna River Basin" means that land area designated as the Rivanna River Basin by the ~~State Water~~  
 5604 ~~Control Board of Environmental Resources~~ pursuant to § 62.1-44.38 and that is also found in the Fifteenth,  
 5605 Seventeenth, Twenty-fourth and Twenty-fifth state Senatorial districts or the Twenty-fifth, Fifty-seventh,  
 5606 Fifty-eighth and Fifty-ninth House of Delegates districts, as those districts existed on January 1, 2002.

5607 **§ 62.1-73. Appointment and removal of Virginia members of Commission.**

5608 In pursuance of Article IV of said compact there shall be three members of the Ohio River Valley Water  
 5609 Sanitation Commission from Virginia. Two members of the Commission shall be appointed by the Governor,  
 5610 subject to confirmation by the General Assembly, from the membership of the ~~State Water Control Board~~  
 5611 ~~continued under § 62.1-44.7 of Environmental Resources~~. The term of the commissioner shall be coincident  
 5612 with that of his term upon the ~~State Water Control Board of Environmental Resources~~. Any vacancy in the  
 5613 office of the commissioner shall be filled by appointment by the Governor. The third Virginia member of the  
 5614 Commission shall be the Director of the Department of Environmental Quality. Any member of the  
 5615 Commission appointed pursuant to this section who cannot be present at a meeting of the Commission, or at  
 5616 any committee or subcommittee of the Commission, may designate any employee of the Department of  
 5617 Environmental Quality or a member of the ~~State Water Control Board of Environmental Resources~~ to attend  
 5618 the meeting and vote on his behalf.

5619 Any commissioner may be removed from office by the Governor.

5620 **§ 62.1-85. License required to construct dam; application.**

5621 The construction or reconstruction of any such dam as is mentioned in § 62.1-83 shall not be begun until  
 5622 the person, firm, association, corporation, private or municipal, or public utility as defined in § 56-232

5623 proposing to construct or reconstruct the same shall first obtain a license so to do from the State Corporation  
 5624 Commission. The application for such license shall be filed with the Commission and in it all the essential  
 5625 facts shall be stated to enable the Commission to pass upon its merits. A copy of such application shall also  
 5626 be filed by the applicant with the Executive Director of the ~~State Water Control~~ Board of *Environmental*  
 5627 *Resources* within ~~ten~~ 10 days after filing such application with the State Corporation Commission. Each  
 5628 application for license shall be accompanied by such maps, plans and other information as may be necessary  
 5629 to give a clear and full understanding of the proposed scheme of development, and of dams, generating  
 5630 stations or other major structures, if any, involved therein.

5631 **§ 62.1-104. Definitions.**

5632 (1) Except as modified ~~below~~ *in this section*, the definitions contained in Title 1 shall apply ~~in~~ to this  
 5633 chapter. (2) *As used in this chapter, unless the context requires a different meaning:*

5634 "Board" means the ~~State Water Control~~ Board of *Environmental Resources*. However, when used outside  
 5635 the context of the promulgation of regulations, including regulations to establish general permits, pursuant to  
 5636 this chapter, "Board" means the Department of Environmental Quality.

5637 (3) "Impounding structure" means a man-made device, whether a dam across a watercourse or other  
 5638 structure outside a watercourse, used or to be used for the authorized storage of flood waters for subsequent  
 5639 beneficial use.

5640 (4) "Watercourse" means a natural channel having a well-defined bed and banks and in which water flows  
 5641 when it normally does flow. For the purposes ~~hereof they shall be~~ *of this chapter, "watercourse" is limited to*  
 5642 *rivers, creeks, streams, branches, and other watercourses which that are nonnavigable in fact and which that*  
 5643 *are wholly within the jurisdiction of the Commonwealth.*

5644 (5) "Riparian land" is land ~~which that~~ is contiguous to and touches a watercourse. It does not include land  
 5645 outside the watershed of the watercourse. Real property under common ownership and ~~which that~~ is not  
 5646 separated from riparian land by land of any other ownership shall likewise be deemed riparian land,  
 5647 notwithstanding that such real property is divided into tracts and parcels ~~which that~~ may not bound upon the  
 5648 watercourse.

5649 (6) "Riparian owner" is an owner of riparian land.

5650 (7) "Average flow" means the average discharge of a stream at a particular point and normally is  
 5651 expressed in cubic feet per second. It may be determined from actual measurements or computed from the  
 5652 most accurate information available.

5653 (8) "Diffused surface waters" are those which, resulting from precipitation, flow down across the surface  
 5654 of the land until they reach a watercourse, after which they become parts of streams.

5655 (9) "Floodwaters" means water in a stream ~~which that~~ is over and above the average flow.

5656 (10) "Court" means the circuit court of the county or city in which an impoundment is located or proposed  
 5657 to be located.

5658 **§ 62.1-105. Impoundment of diffused surface waters.**

5659 Diffused surface waters may be captured and impounded by the owner of the land on which they are  
 5660 present and, when so impounded, become the property of that owner. Such impoundment shall not cause  
 5661 damage to others; however, the owner of land on which an impounding structure ~~as defined in § 10.1-604~~ is  
 5662 to be located shall comply with the rules and regulations of the ~~State Water Control~~ Board of *Environmental*  
 5663 *Resources*.

5664 **§ 62.1-106. When floodwaters may be captured and stored by riparian owners.**

5665 Water in watercourses ~~which that~~ is over and above the average flow of the stream may, upon approval,  
 5666 be captured and stored by riparian owners for their later use under the following conditions:

5667 (1) 1. As a result of the capture and storage of such waters, there will be no damage to others.

5668 (2) 2. The title to the land on which the impounding structure and the impounded water will rest are in the  
 5669 person or persons requesting the authority.

5670 (3) 3. All costs incident to such impoundment, including devices above and below for indicating average  
 5671 flow, will be borne by the person or persons requesting the authority.

5672 (4) 4. For impoundments with a capacity of more than ~~fifty~~ 50 acre-feet of storage, all construction is  
 5673 approved by a licensed professional engineer. For those with capacities of ~~fifty~~ 50 acre-feet, or less, of  
 5674 storage, all construction will be approved by a licensed professional engineer or by some other competent  
 5675 person.

5676 (5) 5. Those requesting the authority will ~~insure~~ *ensure* that the flow below the impoundment is equal to:

5677 (a) a. At least the average flow when the flow immediately above the impounding structure is greater than  
 5678 the average flow;; or

5679 (b) b. At least the flow immediately above the impounding structure when that flow is equal to or less than  
 5680 the average flow.

5681 (6) 6. If needed, provision will be made in the impounding structure for an adequate spillway and for  
 5682 means of releasing water to maintain the required flow downstream.

5683 (7) 7. If for the purposes of irrigation, the quantity of water stored (, exclusive of foreseeable losses), will

5684 not exceed that required for a period of ~~twelve~~ 12 months to irrigate the cleared acreage owned by those  
 5685 participating in the undertaking and lying in the watershed of the stream from which the water is taken.

5686 (8) 8. All structures and equipment incident to such impoundment will be maintained in safe and  
 5687 serviceable condition by the owners and all parts thereof in a watercourse will be removed when no longer  
 5688 required for the purpose.

5689 (9) 9. Priority to the right to store floodwaters, as outlined, will go to upstream riparian owners.

5690 (10) 10. Those impounding floodwaters will, upon request, provide appropriate information concerning  
 5691 the impoundment to the ~~State Water Control~~ Board.

5692 (11) 11. The plans for an impounding structure as defined in § 10.1-604 have the approval of the ~~State~~  
 5693 ~~Water Control~~ Board and conform to the rules and regulations promulgated by the Board.

5694 **§ 62.1-107. Application for leave to store floodwaters; notice to interested persons and to Board.**

5695 Any riparian owner, or riparian owners, desiring to store floodwaters under the conditions specified in §  
 5696 62.1-106 may apply for leave ~~so~~ to do so to the circuit court of the county or city wherein the impounding  
 5697 structure is proposed to be built. Such application shall be made by petition filed in the clerk's office of the  
 5698 court. It shall set forth the name and address of the riparian owner, or owners, the purpose of the proposed  
 5699 impoundment, the desired storage capacity and the basis on which determined, the stream and the point on it  
 5700 from which floodwaters are proposed to be taken, the estimated cost of the project, and an agreement to abide  
 5701 by the provisions of § 62.1-106. It shall be accompanied by a plat or sketch of the riparian property ~~which he~~  
 5702 ~~or they own~~ owned by the petitioner and on which is shown the site of the impounding structure and the area  
 5703 to be flooded by the impounded water. The plat or sketch shall include data sufficient to permit the location  
 5704 of the property on the official highway map of the county or a map of the city or town where appropriate. It  
 5705 shall also be accompanied by a plan of the proposed impounding structure on which appears the approval of  
 5706 the plan by a registered civil engineer or registered agricultural engineer, (or other competent person for  
 5707 storage capacities of ~~fifty~~ 50 acre-feet or less), and agreement thereto by the riparian owner. All interested  
 5708 persons shall be given notice of such application by publication in accordance with §§ 8.01-316 and 8.01-317  
 5709 . A copy of the petition, together with a copy of the plat and a copy of the plan, shall be sent by registered  
 5710 mail to the ~~State Water Control~~ Board.

5711 **§ 62.1-111. When leave not granted; terms and conditions; appeals.**

5712 If, on the report and other evidence, it appears to the court that by granting such leave other riparian  
 5713 owners will be injured, or there are other justifiable reasons for denying the petition, the leave shall not be  
 5714 granted; provided that in no case shall leave be granted if the certified statement from the ~~State Water~~  
 5715 ~~Control~~ Board filed under § 62.1-109 shows that, in the opinion of such Board, the reduction of pollution will  
 5716 be impaired or made more difficult. If it be granted, the court shall place the applicant under such terms and  
 5717 conditions as ~~shall seem to it right~~ determined by the court. An appeal shall lie to the Court of Appeals.

5718 **§ 62.1-218. Grants to local governments.**

5719 The Authority shall have the power and authority, with any funds of the Authority available for this  
 5720 purpose, to make grants to local governments. In determining which local governments are to receive grants,  
 5721 the Department of Environmental Quality, the Department of Health, the Department of Housing and  
 5722 Community Development, and the ~~Virginia Waste Management~~ Board of *Environmental Resources* shall  
 5723 assist the Authority in determining needs for wastewater treatment facilities; water supply facilities; solid  
 5724 waste treatment, disposal, or management facilities; housing, including housing for persons and families of  
 5725 low and moderate income; or recycling facilities, and the method and form of such grants.

5726 **§ 62.1-224. Definitions.**

5727 As used in this chapter, unless *the context requires* a different meaning ~~clearly appears from the context~~:

5728 "Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) ~~of Title~~  
 5729 ~~62.1~~.

5730 "Board" means the ~~State Water Control~~ Board of *Environmental Resources*.

5731 "Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs  
 5732 incurred as reasonable and necessary for carrying out all works and undertakings necessary or incident to the  
 5733 accomplishment of any project. It includes, without limitation, all necessary developmental, planning, and  
 5734 feasibility studies, surveys, plans, and specifications, architectural, engineering, financial, legal, or other  
 5735 special services, the cost of acquisition of land and any buildings and improvements thereon, including the  
 5736 discharge of any obligations of the sellers of such land, buildings, or improvements, site preparation and  
 5737 development, including demolition or removal of existing structures, construction and reconstruction, labor,  
 5738 materials, machinery, and equipment, the reasonable costs of financing incurred in the course of the  
 5739 development of the project, carrying charges incurred before placing the project in service, interest on funds  
 5740 borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in  
 5741 service, necessary expenses incurred in connection with placing the project in service, the funding of  
 5742 accounts and reserves ~~which that~~ the Authority may require, and the cost of other items ~~which that~~ the  
 5743 Authority determines to be reasonable and necessary.

5744 "Fund" means the Virginia Water Facilities Revolving Fund created by this chapter.

5745 "Local government" means any county, city, town, municipal corporation, authority, district, commission,

5746 or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the  
5747 Commonwealth or any combination of any two or more of the foregoing. ~~The term "local~~ "Local  
5748 government" includes any authority, commission, district, sanitary board, or governmental entity issuing  
5749 bonds on behalf of an authority, commission, district, or sanitary board of an adjoining state that operates a  
5750 wastewater treatment facility located in Virginia.

5751 "Other entities" means owners of private wastewater treatment facilities.

5752 "Project" means any small water facility project as defined in § 62.1-229 and any wastewater treatment  
5753 facility located or to be located in the Commonwealth, all or part of which facility serves the citizens of the  
5754 Commonwealth. ~~The term "Project"~~ includes, without limitation, sewage and wastewater (, including surface  
5755 and ground water), collection, treatment, and disposal facilities; drainage facilities and projects; related  
5756 office, administrative, storage, maintenance, and laboratory facilities; and interests in land related thereto.

5757 **§ 62.1-234. Creation and management of Fund.**

5758 A. There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Supply  
5759 Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from  
5760 loans made by it to local governments or other entities, all income from the investment of moneys held in the  
5761 Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund  
5762 shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the  
5763 Board, following consultation with the Authority, to direct the distribution of loans, loan subsidies (,  
5764 including principal forgiveness), or grants from the Fund to particular local governments or other entities and  
5765 to establish the interest rates and repayment terms and those public health conditions deemed necessary by  
5766 the Board of such loans, loan subsidies or grants as provided in this chapter. In order to carry out the  
5767 administration and management of the Fund, the Authority is granted the power to employ officers,  
5768 employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers,  
5769 engineers and other technical advisers and public accountants and, the provisions of any other law to the  
5770 contrary notwithstanding, to determine their duties and compensation without the approval of any other  
5771 agency or instrumentality. However, the Authority shall adopt policies and procedures that minimize the  
5772 costs of professional services associated with the processing of a loan application and the financing or  
5773 refinancing of a project, especially in those instances in which the Board has identified the applicant as  
5774 "disadvantaged."

5775 The Board shall reimburse the Authority for its reasonable costs and expenses incurred in the  
5776 administration and management of the Fund, and the Board may disburse a reasonable fee, to be approved by  
5777 the Board, for the Authority's management services. The Board may require status reports on the Fund from  
5778 the Authority.

5779 B. The Board may enter into a memorandum of understanding or interagency agreement with the ~~State~~  
5780 ~~Water Control~~ Board of Environmental Resources to manage aspects of the Fund, which may include (i)  
5781 reviewing assistance applications and project bid documents, (ii) monitoring projects, and (iii) ensuring  
5782 compliance with environmental review and other program requirements. Any memorandum of understanding  
5783 or interagency agreement shall be approved by the ~~United States~~ U.S. Environmental Protection Agency.

5784 **§ 62.1-241.1. Definitions.**

5785 As used in this chapter, unless *the context requires* a different meaning ~~clearly appears from the context:~~

5786 "Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) ~~of this title~~  
5787 .

5788 "Board" means the ~~Virginia Waste Management~~ Board of Environmental Resources.

5789 "Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs  
5790 incurred by the local government as reasonable and necessary for carrying out all works and undertakings  
5791 necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary  
5792 developmental, planning, and feasibility studies, surveys, plans, and specifications; architectural, engineering,  
5793 financial, legal, or other special services; the cost of acquisition of land and any buildings and improvements  
5794 thereon, including the discharge of any obligations of the sellers of such land, buildings, or improvements;  
5795 site preparation and development, including demolition or removal of existing structures; construction and  
5796 reconstruction; labor, materials, machinery, and equipment; the reasonable costs of financing incurred by the  
5797 local government in the course of the development of the project; carrying charges incurred before placing  
5798 the project in service; interest on funds borrowed to finance the project to a date subsequent to the estimated  
5799 date the project is to be placed in service; necessary expenses incurred in connection with placing the project  
5800 in service; the funding of accounts and reserves ~~which~~ *that* the Authority may require; and the cost of other  
5801 items ~~which~~ *that* the Authority determines to be reasonable and necessary.

5802 "Fund" means the Virginia Solid Waste or Recycling Revolving Fund created by this chapter.

5803 "Local government" means any county, city, town, municipal corporation, authority, district, commission,  
5804 or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the  
5805 Commonwealth or any combination of any two or more of the foregoing.

5806 "Project" means any solid waste management facility as defined in § 10.1-1400 or a recycling facility for

5807 materials identified in a plan adopted pursuant to § 10.1-1411 or both.

5808 **§ 62.1-241.12. Combined Sewer Overflow Matching Fund; purposes.**

5809 There is hereby established the Combined Sewer Overflow Matching Fund (~~"Fund"~~) (*the Fund*) to match  
 5810 federal money for purposes of providing grants to localities for CSO projects. The Fund shall be established  
 5811 out of the sums appropriated from time to time by the General Assembly for the purpose of matching federal  
 5812 funds allocated to Virginia for CSO controls. The Fund, and all income from the investment of moneys held  
 5813 in the Fund and any other sums designated for deposit to the Fund from any source, public or private, shall be  
 5814 set apart as a permanent and perpetual fund, subject to liquidation only upon the solution of Virginia's  
 5815 combined sewer overflow problems, as may be determined by the General Assembly. The Fund shall be  
 5816 administered and managed by the Virginia Resources Authority, subject to the right of the ~~State Water~~  
 5817 ~~Control~~ Board of *Environmental Resources*, following consultation with the Authority, to direct the  
 5818 distribution of grants from the Fund to particular local governments. The ~~State Water Control~~ Board of  
 5819 *Environmental Resources* may establish such terms and conditions on any grant as it deems appropriate, and  
 5820 grants shall be disbursed from the Fund by the Virginia Resources Authority in accordance with the written  
 5821 direction of the ~~State Water Control~~ Board of *Environmental Resources*.

5822 **§ 62.1-242. Definitions.**

5823 As used in this chapter, unless the context requires otherwise a different meaning:

5824 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not  
 5825 limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation,  
 5826 and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (,  
 5827 including public water supply), agricultural, electric power generation, commercial, and industrial uses.  
 5828 Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

5829 "Board" means the ~~State Water Control~~ Board of *Environmental Resources*. However, when used outside  
 5830 the context of the promulgation of regulations, including regulations to establish general permits, pursuant to  
 5831 this chapter, "Board" means the Department of Environmental Quality.

5832 "Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is  
 5833 returned to the stream without substantial diminution in quantity at or near the point from which it was taken  
 5834 and would not result in or exacerbate low flow conditions.

5835 "Surface water withdrawal permit" means a document issued by the Board evidencing the right to  
 5836 withdraw surface water.

5837 "Surface water management area" means a geographically defined surface water area in which the Board  
 5838 has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

5839 "Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

5840 **§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.**

5841 A. No surface water withdrawal permit shall be required for (i) any nonconsumptive use, (ii) any water  
 5842 withdrawal of less than 300,000 gallons in any single month, (iii) any water withdrawal from a farm pond  
 5843 collecting diffuse surface water and not situated on a perennial stream as defined in the United States  
 5844 Geological Survey 7.5-minute series topographic maps, (iv) any withdrawal in any area ~~which~~ *that* has not  
 5845 been declared a surface water management area, or (v) any withdrawal from a wastewater treatment system  
 5846 permitted by the ~~State Water Control~~ Board of *Environmental Resources* or the Department of Energy.

5847 B. No political subdivision or investor-owned water company permitted by the Department of Health shall  
 5848 be required to obtain a surface water withdrawal permit for:

5849 1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface  
 5850 water management area before the daily rate of any such existing withdrawal is increased beyond the  
 5851 maximum daily withdrawal made before July 1, 1989.

5852 2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has  
 5853 received a § 401 certification from the ~~State Water Control~~ Board of *Environmental Resources* pursuant to  
 5854 the requirements of the *federal* Clean Water Act, 33 U.S.C. § 1251 *et seq.* to install any necessary withdrawal  
 5855 structures and make such withdrawal; however, a permit shall be required in any surface water management  
 5856 area before any such withdrawal is increased beyond the amount authorized by the said certification.

5857 3. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public  
 5858 water supply purposes; however, during periods when permit conditions in a surface water management area  
 5859 are in force under regulations adopted by the Board pursuant to § 62.1-249, and when the rate of flow of  
 5860 natural surface water into the impoundment is equal to or less than the average flow of natural surface water  
 5861 at that location, the Board may require the release of water from the impoundment at a rate not exceeding the  
 5862 existing rate of flow of natural surface water into the impoundment.

5863 Withdrawals by a political subdivision or investor-owned water company permitted by the Department of  
 5864 Health shall be affected by subdivision 3 ~~of subsection B~~ only at the option of that political subdivision or  
 5865 investor-owned water company.

5866 To qualify for any exemption in *this* subsection ~~B~~ ~~of this section~~, the political subdivision making the  
 5867 withdrawal, or the political subdivision served by an authority making the withdrawal, shall have instituted a



5868 water conservation program approved by the Board ~~which~~ *that* includes: (i) use of water saving plumbing  
5869 fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water  
5870 loss reduction program; (iii) a water use education program; and (iv) ordinances prohibiting waste of water  
5871 generally and providing for mandatory water use restrictions, with penalties, during water shortage  
5872 emergencies. The Board shall review all such water conservation programs to ensure compliance with *clauses*  
5873 (i) through (iv) of ~~this paragraph~~.

5874 C. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit  
5875 for:

5876 1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface  
5877 water management area before the daily rate of any such existing withdrawal is increased beyond the  
5878 maximum daily withdrawal made before July 1, 1989.

5879 2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has  
5880 received a § 401 certification from the ~~State Water Control~~ *Board of Environmental Resources* pursuant to  
5881 the requirements of the *federal* Clean Water Act, *33 U.S.C. § 1251 et seq.*, to install any necessary  
5882 withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water  
5883 management area before any such withdrawal is increased beyond the amount authorized by the said  
5884 certification.

5885 To qualify for either exemption in *this subsection* ~~of this section~~, the beneficial consumptive user shall  
5886 have instituted a water management program approved by the Board ~~which~~ *that* includes: (i) use of water-  
5887 saving plumbing; (ii) a water loss reduction program; (iii) a water use education program; and (iv) mandatory  
5888 reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with  
5889 other uses exempted under subsection B of ~~this section~~. The Board shall review all such water management  
5890 programs to ensure compliance with *clauses* (i) through (iv) of ~~this paragraph~~.

5891 D. The Board shall issue certificates for any withdrawals exempted pursuant to subsections B and C of  
5892 ~~this section~~. Such certificates shall include conservation or management programs as conditions thereof.

5893 **§ 62.1-255. Definitions.**

5894 As used in this chapter, unless the context requires ~~otherwise~~ *a different meaning*:

5895 "Agricultural irrigation" means irrigation that is used to support any operation devoted to the bona fide  
5896 production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat,  
5897 dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of  
5898 products from silvicultural activity.

5899 "Beneficial use" includes domestic (, including public water supply), agricultural, commercial, and  
5900 industrial uses.

5901 "Board" means the ~~State Water Control~~ *Board of Environmental Resources*. However, when used outside  
5902 the context of the promulgation of regulations, including regulations to establish general permits, pursuant to  
5903 this chapter, "Board" means the Department of Environmental Quality.

5904 "Department" means the Department of Environmental Quality.

5905 "Eastern Shore Groundwater Management Area" means the ground water management area declared by  
5906 the Board encompassing the Counties of Accomack and Northampton.

5907 "Ground water" means any water, except capillary moisture, beneath the land surface in the zone of  
5908 saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially  
5909 within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water  
5910 stands, flows, percolates, or otherwise occurs.

5911 "Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a  
5912 specified quantity of ground water in a ground water management area.

5913 "Irrigation" means the controlled application of water through man-made systems to supply water  
5914 requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

5915 "Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

5916 "Person" means any and all persons, including individuals, firms, partnerships, associations, public or  
5917 private institutions, municipalities or political subdivisions, governmental agencies, or private or public  
5918 corporations organized under the laws of the Commonwealth or any other state or country.

5919 "Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not  
5920 confined by an overlying impermeable zone.

5921 **§ 62.1-273. Committee duties and functions.**

5922 A. The Committee shall be responsible for ensuring that the SWIFT Project, including its effect on the  
5923 Potomac Aquifer, is monitored independently.

5924 B. The Committee shall periodically, but not less than every five years, obtain an evaluation of the work  
5925 of the Potomac Aquifer Recharge Monitoring Laboratory by an independent panel of national experts  
5926 convened under the auspices of the National Water Research Institute or a similar organization. The  
5927 evaluation shall address (i) monitoring parameter selection procedures; (ii) analytical methods and screening  
5928 techniques; (iii) monitoring locations, frequency, results, and interpretation; (iv) modeling activities; and (v)

5929 research activities.

5930 C. Additional related activities of the Committee may include:

5931 1. Ensuring that a monitoring program is developed and implemented for monitoring water quality,  
5932 geological, aquifer pressure, land subsidence, and other SWIFT Project-related impacts;

5933 2. Ensuring independent review of data concerning the quality of the final water produced by the SWIFT  
5934 Project and upstream process control testing conducted by HRSD in the course of operating the SWIFT  
5935 Project;

5936 3. Ensuring that a continuous record of monitoring data is maintained and available;

5937 4. Ensuring that projections are made of the effects of the SWIFT Project;

5938 5. Ensuring that the Laboratory operations are separate, distinct, and independent from operations by  
5939 HRSD;

5940 6. Ensuring that research or modeling on aquifer science, managed aquifer recharge, water reuse  
5941 treatment, wastewater treatment, and advanced treatment technology is conducted and coordinated with the  
5942 appropriate stakeholders;

5943 7. Ensuring that data on the status and performance of the SWIFT Project and on any changes in the  
5944 condition of the aquifer due to the SWIFT Project are synthesized, reported, and submitted at least once a  
5945 year to the relevant regulatory agencies and made available to localities, water authorities, the general public,  
5946 and other stakeholders within the Eastern Virginia Groundwater Management Area;

5947 8. Serving as a liaison with stakeholders in the Eastern Virginia Groundwater Management Area;

5948 9. Ensuring that informational material related to the SWIFT Project is readily available to the public;

5949 10. Ensuring that the Laboratory is established to fulfill the above responsibilities;

5950 11. In the event that the Committee finds there to be, related to the SWIFT Project, an imminent danger to  
5951 the environment, a public water supply, or public health, welfare, or safety, referring such matter to the ~~State~~  
5952 ~~Water Control Board~~ *Department of Environmental Quality* for the potential issuance of an emergency order  
5953 to cease injection or make changes pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 or to the Virginia  
5954 Department of Health for the potential issuance of an emergency order to cease injection or make changes  
5955 pursuant to § 32.1-13 or 32.1-175; and

5956 12. In the event that the Committee finds that SWIFT Project water does not meet HRSD standards for  
5957 tasting events, directing HRSD to discontinue its use of SWIFT Project water in water tasting demonstrations  
5958 or limited demonstration-scale promotional products.

5959 D. The Committee may establish an advisory council to provide scientific and technical expertise in fields  
5960 including aquifer science, managed aquifer recharge, wastewater treatment, advanced water treatment  
5961 technology, water reuse, geology, geochemistry, hydrogeology, and related fields. The Committee may direct  
5962 the advisory council to synthesize technical information for the Committee, provide recommendations related  
5963 to monitoring SWIFT Project impacts, and provide other advice and support.

5964 E. The authority granted to the Committee pursuant to this section shall not be construed to prohibit or  
5965 limit the Department, the ~~State Water Control Board~~ *Board of Environmental Resources*, or the State Health  
5966 Commissioner from taking any lawful action related to the SWIFT Project.

5967 **2. That §§ 10.1-1184, 10.1-1301 through 10.1-1305, 10.1-1401, and 62.1-44.7 of the Code of Virginia are**  
5968 **repealed.**

5969 **3. That notwithstanding the provisions of § 10.1-1183.1 of the Code of Virginia, as created by this act,**  
5970 **the Governor's initial appointments of nonlegislative citizen members to the Board of Environmental**  
5971 **Resources shall be staggered as follows: three members for a term of four years, two members for a**  
5972 **term of three years, two members for a term of two years, and two members for a term of one year.**  
5973 **After the initial staggering of terms, members shall be appointed by the Governor for terms of four**  
5974 **years in accordance with the provisions of § 10.1-1183.1 of the Code of Virginia, as created by this act.**

5975 **4. That the term of any person serving as a member of the State Air Pollution Control Board, State**  
5976 **Water Control Board, or Virginia Waste Management Board prior to the effective date of this act shall**  
5977 **expire on the effective date of this act.**