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REVISION OF TITLE 62 OF THE CODE OF VIRGINIA

**REPORT OF THE
VIRGINIA CODE COMMISSION**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



HD 10,1968

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1967

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REVISION OF TITLE 62 OF THE CODE OF VIRGINIA
REPORT OF
THE VIRGINIA CODE COMMISSION
TO
THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA

To:

HONORABLE MILLS E. GODWIN, *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its Regular Session of 1966 directed the Virginia Code Commission, by Chapter 315 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 62, relating to waters of the State, ports and harbors.

Extracts from Chapter 315 follow:

“§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions shall be printed and circulated among interested persons and their comments solicited.

“§ 2. The Commission shall undertake the revision of Titles 59, 60, 61, 62, 63, 64 and 65 and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-seven, a report of its recommendations, together with suggested legislation necessary to carry such recommendations into effect.”

Hugh Reid Thompson, Jr., Esquire, of the Richmond City Bar, was retained as Counsel to assist in the revision of this Title.

Counsel examined the provisions of this Title in detail and consulted officials of the State agencies interested in and affected by this Title. The Code Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials.

As a result of its efforts, the Commission considered it desirable that there be a general renumeration of the sections, the deletion of certain obsolete sections, and the amendment of other sections. We are of the opinion that this can be better accomplished by the repeal of Title 62 and the enactment of Title 62.1 in lieu thereof.

Included in this Report is the Report of Counsel to the Commission on Title 62. Also, following each section of the draft of Title 62.1 are Counsel's notes identifying the source of the provisions of the section and commenting

upon any changes therein. Furthermore, preceding the draft of Title 62.1 there is set forth a table of comparable sections, for the purpose of tracing each of the provisions of Title 62 into proposed Title 62.1. This table also indicates those sections of Title 62 which have been deleted. Those who are interested in the major features of the Revision should read the Report of Counsel and the notes following the several sections of Title 62.1, to which reference is hereby made.

RECOMMENDATIONS

The Code Commission submits this Report, and recommends that the Legislature enact the attached bill in 1968.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of the officials of the State agencies affected by this Title.

Respectfully submitted,

James M. Thomson, *Chairman*
E. Almer Ames, Jr., *Vice-Chairman*
Fred W. Bateman
John Wingo Knowles
G. M. Lapsley
Robert D. McIlwaine, III
A. L. Philpott

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December 20, 1967

The Honorable James M. Thompson, Chairman
The Honorable E. Almer Ames, Jr.
The Honorable Fred W. Bateman
The Honorable John Wingo Knowles
The Honorable G. M. Lapsley
The Honorable Robert D. McIlwaine, III
The Honorable A. L. Philpott

Virginia Code Commission
State Capitol
Richmond, Virginia

Gentlemen:

Transmitted to you herewith is a draft of a proposed revision of Title 62 of the Code of Virginia.

This draft has been prepared in compliance with the provisions of Chapter 315 of the Acts of Assembly of 1966 approved March 31, 1966, and in keeping with your desires insofar as I have been able to determine them from the several conferences held by the Commission to consider these matters. It has been prepared in the usual form, i.e., a bill suitable for introduction at the 1968 session of the General Assembly together with the table of contents and table of comparable sections. Each section of the draft is followed by a reference to its source and a footnote explaining any changes therein and the reasons therefor. The bill is designed to repeal Title 62 and provide in substitution therefor a new Title 62.1.

Although the theme of the title, general nature of its subject matter, general order of its materials and many of its specific provisions remain unchanged, a number of amendments and deletions were required. The following are representative changes:

§ 62-2 (in this report § 62.1-2) is amended to provide a definition of the long-standing statutory term "lawful survey", which has variously been interpreted in the several Tidewater counties with respect to the subaqueous rights of claimants under various surveys, both public and private.

A number of changes may be found in the State Water Control Law (Code §§ 62-10 to 62-42; this report §§ 62.1-14 to 62.1-44). The basic definitions therefor have been reviewed carefully and amended for clarification (see § 62.1-15). Obsolete and ambiguous provisions have been deleted from or amended in several sections (see §§ 62.1-20, 62.1-26, 62.1-29).

§ 62.1-27, which relates to the powers and duties of the State Water Control Board, is amended to provide for:

1. Special orders and special emergency orders,
2. More efficient procedures for the issuance of special orders and routine, uncontested certificate amendments,

3. Appropriate rulings with notice with respect to both (a) new or expanded establishments generally and (b) new sewerage systems and sewage treatment works,
4. Reimbursement of the Board for funds required to litigate "fish kill" cases, and
5. The adoption of such regulations as it deems necessary to enforce its own general pollution abatement program.

§ 62-40 (in this report § 62.1-33) has been revised and relocated to more clearly delineate the duties of the State Water Control Board and the State Department of Health with respect to sewerage systems and sewage treatment plants. For additional details, see "Note" following § 62.1-33.

§ 62.1-45 provides definitions for the Public Water Supply Law. The definition of "owner" therein is broadened to include counties.

§ 62.1-48 provides for the examination of water supplies by the State Board of Health. Its amendment permits such examination "at any time during the planning, construction, or operation thereof"; instead of only extant supplies.

§ 62.1-50 relates to permits from the State Board of Health to supply water for drinking or domestic purposes. It is amended to require such permit to "establish, construct or operate any waterworks or water supply system" intended to "supply water for such purposes".

§ 62.1-55 relates to the revocation or amendment of permits issued by the Board. Its amendment provides for revocation or change of ownership.

§ 62.1-129 is amended to increase the per diem of the Virginia Ports Authority from \$15.00 to \$25.00.

§ 62.1-135 is amended to subject employment practices of the State Ports Authority to the provisions of the Virginia Personnel Act.

§ 62.1-163. This is an entirely new section prepared in substitution for § 62-122 through § 62-138, relating to "harbor masters, dock masters and port wardens", which sections are obsolete. The new section provides a uniform policy for port management. The attention of the reader is especially invited to the full text of this section and to the note which follows the text.

§ 62.1-172 of the motor boat law is amended to provide for the promulgation of rules and regulations by the Commission of Game and Inland Fisheries, whereas the section relied directly upon the Federal statutes (33 USC 143, 147D).

§ 62.1-194. This is an entirely new section to replace the piecemeal provisions of §§ 62-182 through 62-191 and to provide a more adequate statute of general application. The effect of the new section is to make the obstruction or contamination of water courses and tidal waters a general misdemeanor. The present act (§ 62-194) prohibiting the discharge of oil from vessels would remain in full force and effect.

This revision of Title 62 deletes the following sections for the reasons stated:

§ 62-3.1. This special purpose statute permitted the use or conveyance under special circumstances of subaqueous soil in streams adjoining Bedford and Amherst counties. It does not conform with general State policy and now is obsolete.

§ 62-8. This statute provided special consequences for any mill owner who failed to keep his dam, locks or sluices in order. It now is obsolete.

§ 62-9. This act of 1930 permitted the construction of a marine museum and park by authorizing a dam at a specifically described location. It now is obsolete.

§ 62-14.1. This was a construction provision. It now is obsolete.

§§ 62-43, 62-44 and 62-45. These three very broad criminal statutes date back to 1918, were enacted to protect public supplies from all types of contamination and were amended on several occasions to further broaden their protection. With the enactment in 1946 of the State Water Control Law (Code §§ 62-10 to 62-40; this report §§ 62.1-14 to 62.1-44) and the subsequent enactment in 1964 of the Public Water Supply Law (Code §§ 62-46 to 62-61; this report §§ 62.1-45 to 62.1-63) these three sections became obsolete. Adequate protection now is otherwise provided by law with specific responsibilities assigned for the enforcement thereof.

§ 62-80. This 1928 section empowered the State Corporation Commission to determine what provisions, if any, should be made for the passage of fish with respect to dams of less than 20 feet in height. It now is obsolete.

§§ 62-90 and 62-91. These are 1928 special provisions for appeals from rulings of the State Corporation Commission under chapter 5 of Title 62. They now are obsolete. Such appeals are covered by the general provisions of law for appeals from the State Corporation Commission.

§ 62-106.10. This section, which purports to permit the State Ports Authority to retain control over custody and use of revenues from its facilities and activities has never been honored, is considered to be of no effect and is ambiguous. Its removal has been requested by the State Ports Authority.

§§ 62-141 to 62-174. §§ 62-141 through 62-174 are deleted as obsolete, §§ 62-142 through 62-147 relate to steam whistles on the James River, landing sick seamen and passengers, burial of dead from vessels and runaway seamen. These provisions are no longer needed because of expanded federal control of traffic, safety and activities generally upon the navigable waters of the state together with more adequate recent state legislation relating to port management, small craft safety and public health. §§ 62-158 through 62-174 relate to commissioners of wrecks. It is of historical interest that these provisions have remained, without change, as laws of this State since 1792, a time when sailing vessels frequently were unable to withstand the perils of the sea and the public was more prone to pilfer property from the vessel. The original purpose of these provisions appears to have been the designation of a State official who could be placed in charge of a wreck and its cargo to the end that it might be preserved for the ultimate benefit of the owner. For additional history of this article, attention is invited to *Wiggins v. 1100 Tons, More or Less, of Italian Marble*, 186 F. Supp. 452. The records of the Secretary of the Commonwealth show that the last appointment under this section was that of F. Macon Tamage for Princess Anne County and the City of Virginia Beach on August 22, 1956. Earlier the same year, on August 10, 1956, William M. Snyder was appointed for the same county and city. The last persons earlier appointed under this section were from Princess Anne County in 1922. No other appointment may be found in the records of the Secretary of the Commonwealth during the past fifty years. Attention is invited to the fact that this act has applied only to counties. By act of the General Assembly in 1962, the areas comprising the county of Princess Anne and the city of Virginia

Beach were combined to form the city of Virginia Beach effective January 1, 1963. In practice the purpose of §§ 62-158 through 62-174 today are fulfilled by the U. S. Coast Guard and Navy.

§§ 62-182 to 62-191. These piece-meal and random sections all relate to the same subject matter covered by new § 62.1-194, supra.

In addition to the amendments to and deletions of the sections mentioned above, numerous additional amendments purely technical in nature may be found throughout the draft of Title 62.1.

Counsel wishes to acknowledge the cooperation and support of the many state agencies and individuals who assisted him with this work. He sincerely regrets that the list is too long to be set forth here in its entirety.

Counsel recommends the accompanying draft of Title 62.1 as a substantial improvement over Title 62 and suggests its submission to the Governor and General Assembly for introduction at the 1968 session.

Respectfully,

HUGH R. THOMPSON, JR.

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A *BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to waters of the state, ports and harbors; to that end to repeal Title 62 of the Code of Virginia, which title includes Chapters 1 to 14 and §§ 62-1 to 62-195, inclusive, of the Code of Virginia, as amended, and relates to waters of the state, ports and harbors; to amend the Code of Virginia by adding thereto; in lieu of the foregoing title, chapters and sections of the Code repealed by this act, a new title numbered 62.1 which new title includes new chapters numbered 1 to 20 inclusive, and new sections numbered 62.1-1 to 62.1-196, inclusive, relating to waters of the state, ports and harbors; to amend and re-enact §§ 28.1-116 and 33-69 of the Code of Virginia, relating, respectively, to the rights of owners of waters within a lawful survey and to taking road materials from streams, rivers and water courses; and to prescribe when such revision and recodification shall become effective.*

Be it enacted by the General Assembly of Virginia :

1. That Title 62 of the Code of Virginia, which title includes chapters 1 to 14 and §§ 62-1 to 62-195, inclusive, of the Code of Virginia, as amended, is repealed.
2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code herein repealed, a new title numbered 62.1, new chapters numbered 1 to 20, inclusive, and new sections numbered 62.1-1 to 62.1-196, inclusive, which new title, chapters and sections are as follows :

TITLE 62.1

WATERS OF THE STATE, PORTS AND HARBORS.

CHAPTER 1.

WATER COURSES GENERALLY.

§ 62.1-1. Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common.—All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of this Commonwealth, and not conveyed by special grant or compact according to law, shall continue and remain the property of the Commonwealth of Virginia, and may be used as a common by all the people of the State for the purpose of fishing and fowling, and of taking and catching oysters and other shellfish, subject to the provisions of Title 28.1, and any future laws that may be passed by the General Assembly. And no grant shall hereafter be issued by the State Librarian to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether the bed, rock or shoal shall ebb bare or not.

Source: § 62-1.

Note: "Title 28.1" has been substituted for "Title 28". The second paragraph of § 62-1 is made a new section. Part 2 of § 62-1 is relocated in § 62.1-5. The best available history of this section and related provisions is found in *Miller v. Commonwealth*, 159 Va. 924. Additional valuable references and observations are found in Alvin T. Embrey's study entitled "'Waters of the State' or Property in Virginia in the Banks, Shores and Beds of the Bay of Chesapeake, The Sea, The Rivers and Creeks of The State and Control of The Waters Thereof" published in Richmond, Virginia by the Old Dominion Press, Inc. in 1931, at the request of the State Commission on Conservation and Development. Also see § 175 of the Constitution of Virginia. Declaratory of existing law—*Taylor v.*

Com., 102 Va. 759, 47 S. E. 875; Newport News, etc., Dry Dock Co. v. Jones, 105 Va. 503, 54 S. E. 314; Meredith v. Triple Island Gunning Club, 113 Va. 80, 73 S. E. 721. Title to water beds.—Norfolk City v. Cooke, 27 Gratt. (68 Va.) 430. Home v. Richards, 4 Call (8 Va.) 441; Mead v. Haynes, 3 Rand (24 Va.) 33; French v. Bankhead, 11 Gratt. (52 Va.) 136. Applies to tidal and nontidal waters.—Schermerhorn v. Dozier, 251 F. 839. James Riber, etc., Co. v. Old Dominion Iron, etc., Corp., 138 Va. 461, 122 S. E. 344; Cape Henry Syndicate v. Whitehead, 11 Va. L. Reg. 131, reversed on other grounds in Whitehead v. Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306. Governs use of public waters.—Avery v. Beale, 195 Va. 690, 80 S. E. 2nd 584. Rights of riparian owner.—United States v. Smoot, Sand Gravel Corp., 248 F. 2nd 822; Thurston v. City of Portsmouth, 205 Va. 909, 140 S. E. 2nd 678. §§ 62-3.1, 62-8 and 62-9 are deleted from this Title as obsolete.

§ 62.1-2. Rights of owners to extend to low water mark.—Subject to the provisions of the preceding section, the limits or bounds of the several tracts of land lying on such bays, rivers, creeks and shores, and the rights and privileges of the owners of such lands, shall extend to low watermark, but no farther, unless where a creek or river, or some part thereof, is comprised within the limits of a lawful survey.

For the purposes of this section “lawful survey” shall mean the boundaries of any land, including submerged lands, held under a special grant or compact as required by § 62.1-1 whenever such boundaries shall have been determined by generally accepted surveying methods and procedures and evidenced by a plat or map thereof recorded in the clerk’s office of the court wherein deeds are recorded in the county or city wherein such land lies.

Source: § 62-2.

Note: The definition of “lawful survey” is new and is intended to distinguish its usage here with respect to private ownership from any special or conditional rights in public lands based upon any public survey. See Note to § 62.1-1. The term “low water mark” means ordinary low water.—Scott v. Doughty, 124 Va. 358, 97 S. E. 802. Fee simple extends to low watermark—Taylor v. Com., 102 Va. 759, 47 S. E. 875; Groner v. Foster, 94 Va. 650, 27, S. E. 493; Wheaton v. Doughty, 116 Va. 566, 82 S. E. 94; Steelman v. Field, 142 Va. 383, 128 S. E. 588; Schermerhorn v. Dozier, 251 F. 839; McDonald v. Whitehurst, 47 F. 757; Cape Henry Syndicate v. Whitehead, 11 Va. L. Reg. 131, reversed on other grounds in Whitehead v. Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306; Shephard v. Boggs 198 Va. 299, 94 S. E. 2nd 300. Cross Reference—§ 28.1-100 et seq. (a companion bill is drawn to amend § 28.1-116 to conform with this new definition of “lawful survey.”)

§ 62.1-3. Authority required for use of subaqueous beds.—It shall be unlawful and constitute a misdemeanor for anyone to build, dump, or otherwise trespass or encroach upon or take or use any materials from the beds of the bays, rivers, creeks, and the shores of the sea, which are the property of the Commonwealth, without first obtaining authority from the Commission of Fisheries, except for (1) the erection of dams, the construction of which has been authorized by proper authority, (2) the uses of subaqueous beds authorized under the provisions of Title 28.1 of the Code, (3) uses incident to the construction and maintenance of approved navigation and flood-control projects, (4) sea-walls and jetties incident to controlling erosion, (5) private docks and landings for non-commercial use, (6) fills by riparian owners opposite their property to the established bulkhead line, (7) bridge, dock, pier and other facilities for public use or owned or operated by any public service corporation, and (8) other uses which have been or may be authorized by the General Assembly.

Such authority by the Commission of Fisheries shall be in writing and shall specify such conditions, terms and royalties as the Commission of Fisheries deems appropriate; provided, however, that in the case of marinas and boatyards for commercial use and not included in any of the exceptions hereinbefore set forth, the Commission of Fisheries shall issue a permit without payment of royalty upon presentation by the owner of plans which have been approved by the United States Corps of Army Engineers for the erection of piers, docks, landings, slips, bulkheads, or other structures adjacent to their highland property, and provided there is no encroachment upon (1) permits, licenses, or easements previously issued, (2) existing oyster ground leases or (3) the Baylor Survey. Upon application therefor, the Commission of Fisheries shall transfer such permit.

A fee of twenty-five dollars shall be paid for issuing each such permit. When such plans called for removal of bottom material that fact shall be stated in the permit and there shall be paid a royalty of five cents per cubic yard for the removal of such material. Maintenance dredging of any area from which such bottom material has been removed shall be exempt from further royalty. Any such agreement or contract approved and made by the Commission of Fisheries shall be subject to the approval of the Attorney General, with the consent and approval of the Governor.

All royalties or funds that are collected from such agreements or contracts shall be paid into the State treasury to the credit of the Special Public Oyster Rock Replenishment Fund for the purposes of such fund. Expenditures and disbursements of all sums from such fund shall be made by the State treasurer on warrant of the Comptroller issued on vouchers signed by such person or persons as shall be so authorized and designated by the Commission of Fisheries.

All permits heretofore issued pursuant to this section or prior section 62-2.1 are hereby ratified, validated and confirmed.

Source: § 62-2.1.

Note: The sentence and paragraph structure of this section has been changed considerably for clarity, but there is no substantive change. Cross reference for Public Oyster Rocks Replenishment Fund, see §§ 28.1-94, 28.1-94.1.

§ 62.1-4. Granting easements in, and leaving of, the beds of certain waters; Public Oyster Rock Replenishment Fund.—The Commission of Fisheries, with the approval of the Attorney General and the Governor, may grant easements in, and may lease, the beds of the water of the State, without the Baylor Survey. Every such easement or lease may be for a period not exceeding five years, may include the right to renew the same for an additional period not exceeding five years each and shall specify the rent royalties and such other terms deemed expedient and proper. Such easements and leases may, in addition to any other rights, authorize the grantees and lessees to prospect for and take from the bottoms covered thereby, oil, gas, and such other minerals and mineral substances as are therein specified; provided, that no such easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the State concerning fishing, fowling, and the catching and taking of oysters and other shellfish, in and from the bottoms so leased, and the waters covering the same. All easements granted and leases made under the authority granted by this section, shall be executed in the name and for and on behalf of the State, by the Attorney General, and shall be countersigned by the Governor. All rents or royalties collected from such easements or leases shall be paid into the State treasury to the credit of the Special Public Oyster Rock Replenishment Fund for

the purposes of such fund. Expenditures and disbursements of all sums from such fund shall be made as provided in § 62.1-4. The Commissioner of Fisheries and the Attorney General shall make reports to the General Assembly of all such easements granted or leases so made, such reports to be made on or before the first day of December preceding the convening of each regular session thereof.

Source: 62-3.

Note: The sentence structure, punctuation and wording have been changed for clarity. However, there is no substantive change. Cross reference for Public Oyster Rocks Replenishment Fund, see §§ 28.1-94, 28.1-94.1.

§ 62.1-5. Commission of Game and Inland Fisheries to control certain lands.—The Commission of Game and Inland Fisheries is hereby empowered to control land owned by and under the control of the Commonwealth under Back Bay, its tributaries and the North Landing River from the North Carolina line to North Landing Bridge, in order to regulate or prohibit by regulation any drilling, dredging or other operation designed to recover or obtain shell, minerals or other substance, in order to prevent practices and operations which would harm the area for fish and wildlife.

Source: § 62-1.

Note: This section is the second paragraph of § 62-1. The first paragraph of § 62-1 is found in § 62.1-1. These provisions are relocated for better sequence.

§ 62.1-6. How water courses between counties cleared of obstructions.—The circuit court of any county which is divided by a water course from another county or through any part of which a water course passes may, by itself or in conjunction with the circuit court or circuit courts of any other county or counties, contract with any person or order laborers to be hired to clear such water course of obstructions in such manner and to such extent as may seem to it proper, and there shall be charged on any county whatever sum the court thereof may agree to pay for such purpose.

Source: § 62-4.

Note: No change.

§ 62.1-7. Rights of improving navigation preserved; dams, etc.—Whatever power is reserved to the General Assembly by any act heretofore passed to abate or remove any dam or other works in a water course, or to improve its navigation, shall continue in full force. And in no case shall the right of the State, or of any company incorporated for opening, improving, or extending the navigation of any water course, to preference in the use of the water flowing therein for the purposes of such navigation be affected by any order of court, which, since the first day of April, eighteen hundred and sixteen, has been made, or hereafter may be made, granting leave to any person to erect a dam or other obstruction across or in such water course.

Source: § 62-5.

Note: The word "to" is inserted before the word "improve" in the first sentence.

§ 62.1-8. Limitation on power of courts to grant leave to erect dams.—Where a water course is navigable, or by law declared a public highway, no court shall grant leave to any person to erect in that part of it any dam which will obstruct ordinary navigation or the passage of fish; and where any law has been or shall be enacted for opening, improving or extending the navigation of a water course no court shall,

while such law is in force, grant leave to any person to erect any dam or other obstruction across or in such water course which will in any way interfere with the navigation thereof without express authority of law or the consent of the company incorporated to open, improve or extend such navigation. Any such dam shall, notwithstanding it may be built under such leave, be deemed a nuisance, and may be abated as such, or such company or the State may make a lock or locks in such dam for the passage of vessels and boats without being required to make any compensation therefor.

Source: § 62-6.

Note: A number of corrections have been made in the sentence structure and punctuation, without substantive change.

§ 62.1-9. Construction of two preceding sections.—The two preceding sections shall not be construed to give any greater or other right to any person who has erected or may erect any dam or other obstruction across or in any water course, than such person would have had if such sections had not been enacted.

Source: § 62-7.

Note: No change.

CHAPTER 2.

STATE POLICY AS TO WATERS.

§ 62.1-10. Definitions.—As used in this chapter, the following terms shall have the meanings respectively ascribed to them:

(a) “Water” includes all waters, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction and which affect the public welfare.

(b) “Beneficial use” means domestic, agricultural and commercial and industrial uses.

Source: § 62-9.1.

Note: No change. The provisions of this chapter appear to be clear and vital in all respects. No change is suggested.

§ 62.1-11. Declared natural resource; State regulation and conservation; limitations upon right to use.—(a) Such waters are a natural resource which should be regulated by the State.

(b) The regulation, control, development and use of waters for all purposes beneficial to the public are within the jurisdiction of the State which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.

(c) The changing wants and needs of the people of the State may require the water resources of the State to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste or unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the State and their interest in the reasonable and beneficial use thereof.

(d) The public welfare and interest of the people of the State require the proper development, wise use, conservation and protection of

water resources together with protection of land resources, as affected thereby.

(e) The right to the use of water or to the flow of water in or from any natural stream, lake or other watercourse in this State is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.

Source: § 62-9.2.

Note: No change.

§ 62.1-12. Valid uses not affected; chapter not applicable to proceedings determining rights.—Nothing in this chapter shall operate to affect any existing valid use of such waters or interfere with such uses hereafter acquired, nor shall it be construed as applying to the determination of rights in any proceeding now pending or hereafter instituted.

Source: § 62-9.3.

Note: No change.

§ 62.1-13. Construction with reference to rights, etc., of counties, cities and towns.—Nothing in this chapter contained shall be construed as a declaration of policy of the State to divest any county, city or town of its title or right to any water or of its powers conferred by law with respect to the disposition thereof; nor shall anything in this chapter be construed to authorize the impairment of any contract to which such county, city or town is a party, or to obligate any county, city or town to appropriate or expend any funds. The purpose of this chapter is to recognize the public use to which such water is devoted.

Source: § 62-9.4.

Note: No change.

CHAPTER 3.

STATE WATER CONTROL LAW.

Article 1.

General Provisions.

§ 62.1-14. Short title; purpose.—The short title of this chapter is State Water Control Law. It is the purpose of this law to: (1) safeguard the clean waters of the State from pollution, (2) prevent any increase in pollution, and (3) reduce existing pollution.

Source: § 62-10.

Note: No change. The State Water Control Law was enacted in 1946 in response to a need which is well expressed in § 62.1-14. The law provided both the authority and the basic means by which the purpose stated in that section could be pursued. Twenty years of experience have proved the law to be basically sound. During the same period of time, several means by which the law might be strengthened and better meet the requirements of the Commonwealth have become manifest: (1) a broader and clearer delineation of the authority of the State Water Control Board and (2) technical improvements in the procedural and enforcement provisions of the act. Consequently, in its treatment of the State Water Control Law, the Virginia Code Commission in this report has attempted to meet the requirements stated.

§ 62.1-15. **Definitions.**—Unless a different meaning is required by the context the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

(1) “Board” means the State Water Control Board, in this chapter sometimes called the Board;

(2) “Member” means a member of the Board;

(3) “Certificate” means any certificate issued by the Board;

(4) “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction;

(5) “Owner” means the State or any of its political subdivisions, any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any person or group of persons acting individually or as a group;

(6) “Pollution” means such alteration of the physical, chemical or biological properties of any State waters, or such discharge or deposit of sewage, industrial waste or other wastes into State waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that an alteration of the physical, chemical, or biological property of State waters, or a discharge or deposit of sewage, industrial wastes or other wastes to State waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to State waters by other owners is sufficient to cause pollution, is “pollution” for the terms and purposes of this law; and provided further that the discharge of untreated sewage by any owner into State waters is “pollution” for the terms and purposes of this law;

(7) “Sewage” means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, underground, surface, storm, or other water, as may be present;

(8) “Industrial wastes” means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource;

(9) “Other wastes” means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances, except industrial wastes and sewage, which may cause pollution of any State waters;

(10) “Establishment” means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal processing operations, quarry, oil refinery, boat, vessel, and each and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any State waters.

(11) “Sewerage system” means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appli-

ances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal;

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

(13) "Rule" means rules adopted by the Board to regulate the procedure of the Board pursuant to § 62.1-27 (7).

(14) "Special Order" means special orders issued under § 62.1-27 (8) or § 62.1-27 (9).

(15) "Ruling" means rulings issued under § 62.1-27 (10).

(16) "Regulation" means regulations issued under § 62.1-27 (11).

(17) "Standards" means standards established under § 62.1-27 (3).

(18) "Policies" means policies established under § 62.1-27 (3).

Source: § 62-11.

Note: Subsection (4) is changed from the wording " 'State waters' means all waters of any river, stream, creek, branch, lake, impounding reservoir, pond, bay, roadstead, estuary, inlet, spring, well, and bodies of surface and underground water, natural or artificial, wholly or partially within or bordering the State or within its jurisdiction".

Subsection (5) is changed from the wording " 'Owner' means the State, a county, sanitary district, municipality, public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, person or individual or group of persons or individuals, acting individually or as a group".

Subsection (6) is substantially amended for the following reasons: The present definition covers only pollution which is caused by waste discharges into State waters. Pollution may occur from at least two sources which are not now adequately covered: (1) Heating of stream water in power plants or other heat exchange operations which involves only a physical change, that of temperature, and (2) loss of dissolved oxygen from deep water in reservoirs back of dams, with the subsequent discharge from the bottom of the dam of very low or zero dissolved oxygen content water. The revised definition covers these and other similar cases that might not come under the present definition. The last paragraph of the new definition, which states that the discharge of untreated sewage into State waters is "pollution," per se, should simplify administration of the law in the case of small municipalities and individual owners discharging sewage. Subsection (7) is amended by deleting the words "and the discharge by any owner of untreated sewage from facilities serving five hundred persons or more shall be prima facie evidence of "pollution" in light of the above reference to raw sewage in the definition of "pollution".

Subsection (10) is amended to conform with the new definition of "pollution".

Subsections (13-18) are added to define the various types of form of actions taken by the Board. The primary purpose of these additions is to clarify the enforcement and appeal provisions of Article 5.

§ 62.1-16. Control by State as to pollution.—No right to continue existing pollution in any State water shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future pollution by any owner. The right and control of the State in and over all State waters is hereby expressly reserved and reaffirmed.

Source: § 62-12.

Note: No change.

§ 62.1-17. Public policy regarding waste discharges or other quality alterations of State waters.—It is hereby declared to be against public policy and a violation of this chapter punishable under § 62.1-44 for any owner who does not have a certificate issued by the Board to (1) discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or (2) otherwise alter the physical, chemical or biological properties of such State waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

Source: § 62-13.

Note: This section is amended to conform with new definition of “pollution”. The words “and a violation of this chapter punishable under § 62.1-44” are added.

§ 62.1-18. Chapter supplementary to existing laws; effect on other laws and sanitation district commissions.—This chapter is intended to supplement existing laws and no part thereof shall be construed to repeal any existing laws specifically enacted for the protection of health or the protection of fish, shellfish and game of the State, except that the administration of any such laws pertaining to the pollution of State waters, as herein defined, shall be in accord with the purpose of this chapter and general policies adopted by the Board; and it is hereby expressly provided that the provisions in this chapter shall not affect any owner who discharges sewage, industrial wastes or other wastes into a sewer or sewerage system which connects with or is a part of the sewerage system maintained and operated (a) by any sanitation district commission heretofore created and existing or hereafter created pursuant to the sanitation districts law of nineteen hundred thirty-eight, as amended, or (b) by any such district commission created under any act passed at the nineteen hundred forty-six regular session of the General Assembly; and further provided that the Board shall have authority, jurisdiction and power to issue, in the case of any sanitation district commission now existing or hereafter created pursuant to such laws, such special order or orders as it may issue to an owner or owners under the provisions of § 62.1-27, such order or orders to be issued in the same manner, for the same reasons and with the same effect as is provided in such section; and further provided that, except as herein otherwise expressly provided, nothing in this chapter shall affect the jurisdiction or powers of such district commissions.

Source: § 62-14.

Note: Internal section reference is conformed. The words “and further provided that none of the provisions of this chapter shall affect any of the provisions of § 62-43.” are deleted, § 62-43 having been deleted.

Article 2.

Control Board Generally

§ 62.1-19. Board continued.—The State Water Control Board, established in the Executive Department of the State, is continued.

Source: § 62-15.

Note: No change.

§ 62.1-20. Number, appointment and terms of members.—The Board shall consist of five members appointed by the Governor subject to confirmation by the General Assembly. Members heretofore appointed shall continue in office for the terms for which appointed; their successors shall be appointed for the terms of four years each. Vacancies other than by

expiration of term shall be filled by the Governor by appointment for the unexpired term.

Source: § 62-16.

Note: The words "Members heretofore appointed shall continue in office for the terms for which appointed; their successors" are substituted for the words "The first appointments hereunder shall be made as follows: two for a term of four years, two for a term of three years, and one for a term of two years; successors to the first appointees hereunder".

§ 62.1-21. Qualifications of members.—Members of the Board shall be citizens of the State; shall be selected from the State at large for merit without regard to political affiliation; and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the work of the Board. No officer, employee or representative of any certificate-holder or of any industry, municipal corporation or county which may become a certificate-holder shall be appointed to the Board.

Source: § 62-17.

Note: This section has been completely rewritten for clarity. Although there is no material change in the first sentence, the word "county" is added in the second sentence.

§ 62.1-22. Compensation and expenses of members.—No salary or compensation shall be allowed any member of the Board for services thereon, but each member shall receive twenty-five dollars a day for attendance upon its meetings and his actual and necessary traveling and other expenses incurred in the discharge of his official duties as a member or by direction or request of the Board.

Source: § 62-18.

Note: The per diem is increased from ten to twenty-five dollars.

§ 62.1-23. Meetings and quorum.—The Board shall meet regularly twice a year, and other meetings may be held at any time or place determined by the Board or upon call of the Chairman or upon written request of any two members. All members shall be duly notified of the time and place of any regular or other meeting at least five days in advance of such meeting.

Source: § 62-19.

Note: The words "twice a year" are substituted for the words "in March and November of each year".

§ 62.1-24. Records of proceedings; special orders, standards, policies, rules and regulations.—The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the executive secretary and open to public inspection. Any standards, policies, rules or regulations adopted by the Board to have general effect in part or all of the State shall be filed with the Secretary of the Commonwealth at least thirty days before they are to take effect. Any special order issued under the provisions of subdivisions (8) or (9) of § 62.1-27 need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail sent to the last known address of such owner and the time limits specified shall be counted from the date of such mailing.

Source: § 62-20.

Note: "Registered mail" has been changed to "certified mail".

§ 62.1-25. Inspections and investigations, etc.—The Board shall make such inspections, conduct such investigations and do such other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of appropriation, funds, or personnel which are, or become, available from any source for this purpose.

Source: § 62-21.

Note: No change.

§ 62.1-26. Chairman; Executive Secretary.—The Board shall elect its Chairman, and it is authorized to employ an Executive Secretary who shall serve as Executive Officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board. The Board is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

Source: §§ 62-22 and 62-24.

Note: The first sentence is taken from § 62-22 without change. With the exception of that portion represented by the second sentence of § 62.1-26, old § 62-24 is deleted. The deleted materials were specifically written for and applicable to the initial phase of the Board's financial operations.

§ 62.1-27. Powers and duties.—It shall be the duty of the Board and it shall have the authority:

(1) To exercise general supervision over the administration and enforcement of this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated thereunder.

(2) To study and investigate all problems concerned with the pollution of State waters and its prevention, abatement, and control and to make reports and recommendations thereon.

(3) To establish such standards of quality for any waters in relation to the reasonable and necessary use thereof as it deems to be in public interest, and such general policies relating to existing or proposed future pollution as it deems necessary to accomplish the purposes of this chapter, to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent pollution contrary to the public interest or to standards and policies thus established.

(4) To conduct scientific experiments, investigations and research to discover economical and practical methods for preventing pollution. To this end the Board may co-operate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the State any moneys which any such agency may contribute as its share of the cost under any such co-operative agreement. Provided, that such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations and research, shall be returned to the contributors.

(5) To issue certificates for the discharge of sewage, industrial wastes and other wastes into or adjacent to or the alteration otherwise of the physical, chemical or biological properties of State waters under prescribed conditions and to revoke or amend such certificates. Revocations or amendments of certificates may be made for good cause and after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If a proposed revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

(6) To make investigations and inspections, to insure compliance with any certificates, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.

(7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the Board may prescribe.

(8) To issue special orders pursuant to §§ 62.1-28 and 62.1-32 (a) directing owners specified in such sections to secure, within a specified time, such operating results as are reasonable and practicable of attainment toward the control, abatement and prevention of pollution of State waters, or (b) further directing such owners who have been issued special orders under (a) above, and who have made unsatisfactory progress toward securing the required operating results, to build or install and use, within a specified time, such facilities as are practicable, reasonable and available for the control, abatement, and prevention of pollution of State waters.

Such special orders are to be issued only after a hearing, with at least thirty days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service as provided in § 62.1-24.

Owners who have been issued special orders under (a) or (b) above may be required to submit periodic progress reports setting forth the steps they have taken toward complying with them.

The Board may modify, amend or cancel special orders issued under (a) or (b) above after such notice and hearing as it may prescribe.

The Board may proceed in accordance with § 62.1-37 to enforce special orders issued under (a) above, whether or not it has proceeded under (b) above.

(9) To issue special orders to owners who are permitting or causing the pollution, as defined by § 62.1-15 (6), of State waters which commenced after July 1, 1946, directing them to cease such pollution immediately.

Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service as provided in § 62.1-24; provided that if the Board finds that any such owner is grossly affecting (a) the public health, safety or welfare, or the health of animals, fish or aquatic life; (b) a public water supply; or (c) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution immediately, and shall hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the Board finds that an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 62.1-37.

Nothing in this section shall limit the Board's authority to proceed against such owner directly under § 62.1-37 or § 62.1-44 for violations of § 62.1-29 or § 62.1-33 without the prior issuance of a special order or an emergency special order.

(10) To make such rulings under § 62.1-29 and § 62.1-33 and under such other circumstances as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(11) To adopt such regulations as it deems necessary to enforce the general pollution abatement program of the Board in all or part of the State, such regulations to be effective thirty days after they are filed with the Secretary of the Commonwealth as provided in § 62.1-24.

(12) To investigate any large scale killing of fish believed or known to have resulted from pollution.

Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has wilfully or negligently discharged sewage, industrial waste, or other waste into State waters in such quantity, concentration or manner that fish are killed as a result thereof it may effect such settlement with the owner as it deems proper and if no such settlement is reached within a reasonable time the Board may authorize its Executive Secretary to bring a civil action in the name of the Board to recover from the owner the replacement value of the fish destroyed by such discharge.

If the owner be a political subdivision of the State the action may be brought in any circuit or corporation court within the territory embraced by such political subdivision. If the owner be an establishment, as defined in this chapter, the action shall be brought in the circuit or corporation court of the city or the circuit court of the county in which such establishment is located. If the owner be an individual or group of individuals the action shall be brought in the circuit or corporation court of the city or circuit court of the county in which such person or any of them reside.

For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though the State Water Control Board were the owner of the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as a defense in bar to any such action.

The proceeds of any recovery had under this subsection shall, when received by the Board after payment of all expenses in excess of the Boards' normal operating expenses plus ex, be paid to the Commissioner of Game and Inland Fisheries to be used only to replace, in so far and as promptly as possible, the fish killed with game fish which in the opinion of the Commissioner of Game and Inland Fisheries are suitable for such waters. Any such funds received are hereby appropriated for that purpose.

Nothing in this subsection shall be construed in any way to limit or prevent any other action which is now authorized by law by the Board against any owner.

Source: § 62-23.

Note: Subsection (1) is conformed with § 62.1-15 (13-18). Subsection (5) changes the Board's authority to issue certificates so as to clarify existing wording; a sentence is added to provide a streamlined procedure for making a routine and uncontested certificate amendment. Subsection (6) is conformed with § 62.1-15 (13-18). In subsection (7), the word "regulation" is deleted. Subsection (8) is streamlined and is intended to apply only to owners discharging industrial wastes and sewage on July 1, 1946. Subsection (9) is new, giving the Board authority to issue special orders and emergency special orders. Subsections (10) and (11) are new. Subsection (12) is formerly subsection (9) with

the added words: "after payment of all expenses in excess of the Board's normal operating expenses plus costs of litigation in connection therewith". Cross-reference—as to duties of Board with respect to samples of water taken by game wardens, see § 29-35.2.

Article 3.

Regulation of Industrial Establishments.

§ 62.1-28. **Existing establishments.**—Upon request of the Board, any owner who on July 1, 1946 was discharging or permitting to be discharged industrial wastes into any waters of the State, or any owner who was otherwise altering the physical, chemical, or biological properties of any State waters, shall within thirty days after such request apply to the Board for a certificate to continue discharging waste into such waters, or to continue such other alteration of the physical, chemical or biological properties of any State waters. The Board shall issue such certificate for an indefinite period.

The owner may be required by the Board, from time to time, to adopt measures for improving the quality of State waters, and to furnish pertinent information with regard to the progress he has made. The Board may amend the certificate, or revoke it and issue a new one, to reflect changes in the quality of State waters made in response to such requirements.

The Board may revoke the certificate in case of a refusal to comply with all such reasonable and proper requirements and may issue a special order as specified in § 62.1-27(8).

Source: § 62-26.

Note: This section, basically whole § 62-26, has been rewritten for clarification and to conform with the revised definition of "pollution".

§ 62.1-29. **New or expanded establishments.**—(1) Any owner who after July one, nineteen hundred forty-six, erects, constructs, or opens, or reopens and operates any establishment which in its operation would cause pollution of State waters shall first provide facilities for the treatment of industrial wastes or other wastes, or take such other measures as will be adequate to prevent such pollution.

(2) Any owner under this section proposing to discharge industrial wastes or other wastes into or otherwise alter the physical, chemical or biological properties of State waters shall make application therefor to the Board. Such application shall be accompanied by a copy of pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and detail satisfactory to the Board.

(3) Public notice of every such application shall be given by notice published once a week for four successive weeks or by such other means as the Board may prescribe in a newspaper of general circulation in the county or city where the certificate is applied for.

(4) The Board shall review the application and the information that accompanies it as soon as practicable and make a ruling approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the discharge of the industrial wastes or other wastes into State waters or for the other alteration of the physical, chemical or biological properties of State waters, as the case may be. If

the application is disapproved, the Board shall notify the owner as to what measures, if any, the owner may take to secure approval.

(5) Establishments enlarging or employing new processes which in their operation will result in the discharge into State waters of new or additional industrial wastes or other wastes into State waters which will alter the physical, chemical or biological properties of such State waters shall be subject to the provisions of this section.

(6) The provisions of this section shall not apply to establishments existing on July one, nineteen hundred forty-six, which may hereafter be temporarily closed for a period not exceeding six months.

Source: §§ 62-25 and 62-28.

Note: This section is derived from § 62-25, which is rewritten to eliminate certain ambiguous and superfluous language which relate to provisions covered in other general provisions of the Act. The basic provisions of § 62-28, relating to "Approval of plans for enlargement of plants or use of new processes" have been incorporated into this section.

§ 62.1-30. Other wastes.—(1) Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-15 (9), any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the Board install facilities approved by the Board or adopt such measures approved by the Board as are necessary to prevent the escape, flow or discharge into any State waters when the escape, flow or discharge of such other wastes into any State waters would cause pollution of such State waters.

(2) Any owner under this section requested by the Board to provide facilities or adopt such measures shall make application therefor to the Board. Such application shall be accompanied by a copy of pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and detail satisfactory to the Board.

(3) The Board shall review the application and the information that accompanies it as soon as practicable and make a ruling approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the handling, storing, distribution or production of such other wastes. If the application is disapproved, the Board shall notify the owner as to what measures the owner may take to secure approval.

Source: New.

Note: This section is provided as a catchall for appropriate control by the Board of all substances other than industrial wastes and sewage which may cause pollution of any State waters.

Article 4.

Regulation of Sewage Discharges.

§ 62.1-31. Sewerage systems, etc., under joint supervision of Board and Department of Health.—All sewerage systems and sewage treatment works shall be under the general supervision of the State Department of Health and the Board jointly. The State Department of Health shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works as to the most appropriate type of treatment, but the Department shall not prepare plans, specifications, or detailed estimates

of cost for any improvement of an existing or proposed sewage treatment works. It shall be the duty of the owner of any such sewage treatment works from which sewage is being discharged into any State waters to furnish, when requested by the Board, to the State Department of Health from time to time information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required. The State Department of Health shall furnish the Board with such available information as the Board requires.

Source: § 62-39.

Note: No change.

§ 62.1-32. Prior sewage discharges; no discharge into clean waters to be authorized.—Upon the request of the Board any owner who, on July first, nineteen hundred and forty-six, was discharging or permitting to be discharged sewage into or adjacent to the waters of the State shall within twelve months after such request apply to the Board for a certificate to continue such discharge of sewage of substantially the same volume and strength as during the twelve months preceding. In making the application, the owner shall furnish such information as may reasonably be required by the Board including: (1) Total population served by the sewerage system, (2) the industrial wastes admitted to the sewerage system, and (3) the type of treatment plant. The Board is authorized to issue such certificate for an indefinite period; provided, however, the certificate may be revoked at any time when it is found on investigation that there has been an increase in the strength or volume of the sewage as discharged into or adjacent to any State waters, or the Board has reason to believe an increase is contemplated. If no satisfactory progress is made by the owner toward the reduction of pollution the Board may require the holder of the certificate to file reasons therefor or may in the case of refusal to comply with recommendations deemed reasonable by the Board revoke the certificate issued to such owner and issue a special order. No certificate shall be issued by the Board authorizing the discharge of untreated sewage which would result in the pollution of the clean State waters.

The Board is authorized to designate any area within the State or State waters as a polluted area due to existing sewage discharge in such area and each owner who contributes to the pollution of such waters in the area shall be subject to all the provisions of this chapter; provided, however, that as to such area or State waters so declared to be a polluted area the Board may, in lieu of issuing an individual certificate to each owner therein, issue a special certificate as to the pollution caused by the owners in such area and the certificate may be granted to the appropriate authority of the political subdivision or subdivisions in which such owner resides. Any such certificate shall be subject to all the terms and conditions of this chapter and shall apply only to existing sewage discharge. For good cause shown, the Board may revoke or amend any certificate in whole or in part as to any owner or group of owners in the area covered by such certificate.

Source: § 62-27.

Note: No change.

§ 62.1-33. Approval of plans and specifications.—Every owner intending to construct a new sewerage system or sewage treatment works designed to serve more than 400 persons or to extend or change materially any existing system or works which serves more than 400 persons shall file in duplicate with the State Department of Health a copy of plans,

specifications and such other information as may reasonably be required, in scope and detail satisfactory to the Department.

The Department shall thereupon notify the Board that it has received the plans and other data. If the plans involve facilities from which there is or is to be a discharge to State waters, the Board shall advise the Department of the standards of quality applying to such State waters.

The Department shall then review the plans without delay and file with the Board one copy and a report in which the plans are approved or disapproved. If they are not approved, the report shall state what modifications, if any, or changes will be required for approval.

The Board shall review the plans and the report from the Department and make a ruling approving or disapproving the plans and stating the grounds for conditional approval or disapproval. If they are approved, the Board shall grant a certificate authorizing construction of the facilities.

Nothing in this section shall limit the power of the Board and the Department in the control of sewerage systems or sewage treatment works serving less than four hundred persons.

Source: § 62-40.

Note: This section is considerably revised and relocated, § 62-40 having given rise to numerous difficulties as to its intent and meaning. There has been some confusion in the past with respect to actions taken by the Board in the approval of plans for sewage treatment submitted by the State Department of Health because there are two separate and distinct steps involved in the process. The first step is a determination of the stream quality to be attained as a result of the purification to be afforded by the planned sewage treatment facilities. Determining the stream quality to be maintained is a Board function under § 62.1-27(3). This version clearly places final authority and responsibility in the Board. The second step is to review the plans to determine if an effluent can be produced, which, when mixed with the stream, will maintain the standards required. According to this revision, once the Board has set the stream water quality objectives, the State Department of Health would determine whether the plans insure that the standards are met.

Article 5.

Enforcement and Appeal Procedure.

§ 62.1-34. Right of entry to obtain information, etc.—Any duly authorized agent of the Board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations reasonably necessary in the enforcement of the provisions of this chapter.

Source § 62-30.

Note: The section has been rewritten to improve the sentence structure. The words appearing after the word "investigations" have been added.

§ 62.1-35. Information to be furnished to Board.—Every owner which the Board has reason to believe is causing, or is about to cause, pollution shall, when requested by the Board, furnish such plans, specifications and information as may be reasonably necessary and pertinent to the Board in the discharge of its duties under this chapter. No owner

shall be required at any time to disclose any secret formulae, processes, or methods used by him or under his direction.

Source: § 62-29.

Note: The section has been rewritten solely to improve the construction of the first sentence. Relocated for better sequence.

§ 62.1-36. Private rights not effected.—The fact that any owner holds or has held a certificate issued under this chapter shall not constitute a defense in any civil action involving private rights.

Source: § 62-32.

Note: The words “holds or has held” are substituted for the words “has or held”.

§ 62.1-37. Enforcement by injunction, etc.—Any owner violating or failing, neglecting or refusing to obey any rule, regulation or order, or requirement of or any provision of any certificate issued by the Board may be compelled to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Source: § 62-33.

Note: This section is amended to broaden the Board’s enforcement powers and to conform with other basic changes in the act.

§ 62.1-38. Right of review.—Any party aggrieved by any standard, policy, rule, regulation, ruling, or special order, issued by the Board under this chapter or by the revocation, amendment or modification of a certificate or any other action of the Board, may secure a review of the reasonableness of, necessity for, or legality of any such standard, policy, rule, regulation, ruling or special order, or revocation, amendment, or modification of a certificate, or any other action of the Board, in the manner set out in the following sections of this article.

Source: § 62-34.

Note: This section is rewritten for clarification.

§ 62.1-39. Filing petition for rehearing.—Such party may, at any time prior to the effective date of any rule, regulation, order, requirement or revocation of certificate complained of, file with the Board a petition requesting a rehearing on such rule, regulation, order, requirement or revocation of certificate, which petition shall set forth, specifically and in full detail wherein the petitioner considers the rule, regulation, order, requirement or revocation of certificate unreasonable, unnecessary or illegal, together with his reason and grounds therefor and the qualifications or changes, if any, which he desires.

Source: § 62-35.

Note: The wording of this section has been changed from: “Such party may, at any time prior to the effective date of the rule, regulation or order or requirement or revocation of certificate complained of, first file with the Board a petition asking for a rehearing on such rule, regulation or order or requirement or revocation of certificate and setting forth specifically and in full detail wherein he considers the rule, regulation or order or requirement or revocation of certificate unreasonable, unnecessary or illegal, his reasons and grounds therefor and the qualifications or changes, if any, that he desires.”

§ 62.1-40. Proceedings on petition for rehearing.—If, in the opinion of the Board, the issues raised by any such petition have theretofore been adequately considered and properly determined, the Board may deter-

mine the same by confirming, without hearing, the previous rule, regulation, order, requirement or revocation of certificate. If it appears to the satisfaction of the Board that no sufficient reason exists for taking testimony, or further testimony, the Board may reconsider and redetermine the original cause without setting a time and place for any further hearing. If it appears to the Board that a hearing or rehearing is necessary to determine the issues raised or any one of such issues, the Board shall order a hearing or rehearing thereon and hear such additional evidence as may be offered on either side and consider and determine the issue or issues raised by such petitions. In either event, the Board may take such action as it deems proper. Notice of the time and place of such hearing or hearings, if any be ordered, shall be given the applicant and to such other persons and in such manner as the Board may order. A petition for a hearing or rehearing shall be deemed to have been denied by the Board unless it shall have been acted upon within thirty days after the date of filing. The filing of a petition for a hearing or a rehearing shall operate to suspend the rule, regulation, order, requirement or revocation of certificate complained of until the validity of such rule, regulation, order, requirement or revocation of certificate has finally adjudicated.

Source: § 62-36.

Note: For better construction, the location of the clause "in the opinion of the Board" has been changed and several other minor grammatical changes have been made throughout the section.

§ 62.1-41. Review by Circuit or Corporation Court.—Any owner aggrieved by any rule or regulation shall have the right to apply to the Circuit Court of the city of Richmond, in term or in vacation. In cases other than those relating to rules and regulations any owner aggrieved shall have the right to apply to the judge of the circuit court of the county or city or the corporation court of the city wherein the establishment affected is located, in term or in vacation, for review of a decision of the Board. Such application shall be by petition, which shall be filed in the clerk's office of the appropriate court within the following prescribed time: within sixty days after the date of the rule or regulation complained of if no application for rehearing has been made; within thirty days after an application for rehearing is denied if such application has been filed; within thirty days after the rendition of the decision of the Board if any application for rehearing has been filed and the matter has been reconsidered or redetermined by the Board, either with or without a rehearing. The filing of the petition with the court shall be deemed to commence the proceeding in such court.

Within fifteen days after such petition is so filed, the petitioner shall serve on the Executive Secretary or on any member of the Board a copy of the petition and a notice in writing that the petitioner will on a date stated in the notice, not less than fifteen days nor more than thirty days after the date of the filing of the petition, move the court or judge thereof to grant the prayer of the petition. The Board shall be named as a party defendant to such petition. The filing of such application shall operate to suspend the requirement, rule, regulation, special order, or revocation of certificate complained of, if not already suspended as provided in section 62.1-40, until the validity of such rule, regulation, special order, requirement or revocation of certificate shall have been finally adjudicated. The judge shall hear the proceeding de novo, shall thereupon determine all matters of law and fact without a jury and render his decision approving, setting aside or modifying the rule, regulation, special order, requirement or revocation of certificate complained of. If, however, a municipal corporation is interested in the proceeding, the judge of any court thereof

shall not pass upon such application, but shall enter the fact of record, and the clerk of the court shall at once certify the same to the Supreme Court of Appeals which shall designate the judge of some other circuit court or of some corporation court other than in such municipal corporation to act in place and stead of such judge.

Source: § 62-37.

Note: A number of minor grammatical changes appear in this section.

§ 62.1-42. Appeal to Supreme Court of Appeals; Attorney General to represent Board.—The Commonwealth or any party aggrieved by any such final decision of the judge shall have the right to apply for an appeal to the Supreme Court of Appeals, regardless of the amount involved. The procedure shall be the same as that provided by law generally for appeals and supersedeas.

It shall be the duty of the Attorney General to represent the Board or designate some member of his staff to represent it.

Source: § 62-38.

Note: The location of the clause "regardless of the amount involved" has been changed.

Article 6.

Offenses and Penalties.

§ 62.1-43. Pollution, violation of certificate or failure to cooperate with Board.—It shall be unlawful for any owner to cause pollution in any State waters in a manner or degree which is contrary to any special order adopted by the Board, which has become final under the provisions of this chapter, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.

Source: § 62-41.

Note: No change.

62.1-44. Penalties.—Any owner violating any provision of this chapter, or failing, neglecting or refusing to comply with any special final order of the Board, or of a court, lawfully issued as herein provided, shall be fined not less than fifty dollars nor more than five hundred dollars for each violation within the discretion of the court. Each day of continued violation after conviction shall constitute a separate offense and shall subject the system, business, or establishment causing pollution in violation of this chapter to abatement as a nuisance.

Source: § 62-42.

Note: The wording of the section is changed from: "Any owner violating any provision of this chapter, or failing, neglecting or refusing to comply with any special final order of the Board, or of a court, lawfully issued as herein provided, shall, upon conviction be liable to a fine of not less than fifty dollars nor more than five hundred dollars for each violation within the discretion of the court and each day of continued violation after conviction shall constitute a separate offense and may subject the system, business, or establishment causing pollution in violation of this chapter to abatement as a nuisance."

CHAPTER 4.

PUBLIC WATER SUPPLY.

§ 62.1-45. **Definitions.**—As used in this chapter the words and terms hereinafter set forth shall have the meanings respectively set forth, unless the context clearly requires a different meaning:

(a) “Waterworks.”—All structures and appliances used in connection with the collection, storage, purification and treatment of water for drinking or domestic use and the distribution thereof to the public or more than twenty-five individuals, or in the case of residential consumers to more than fifteen connections, except only the piping and fixtures inside the buildings where such water is delivered.

(b) “Water supply.”—Water that shall have been taken into waterworks from all wells, streams, springs, lakes and other bodies of surface water, natural or impounded, and the tributaries thereto, and all impounded ground water, but the term “water supply” shall not include any waters above the point of intake of such waterworks.

(c) “Owner.”—An individual, group of individuals, partnership, firm, association, institution, corporation, municipal corporation, county or authority, which supplies water to any person within this State from or by means of any waterworks.

(d) “Pure water.”—Water fit for human consumption and use which is sanitary, and normally free of minerals, organic substances and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in supply for the minimum health requirements of the persons served.

(e) “Board.”—The State Board of Health.

Source: § 62-46.

Note: In subsection (c) the words “county or” are added.

§ 62.1-46. **Supervision by State Board of Health.**—The Board shall have general supervision and control over all water supplies and waterworks in the State in so far as the sanitary and physical quality of waters furnished for drinking or domestic purposes may affect the public health, and may require that all water supplies be pure water.

Source: § 62-47.

Note: No change.

§ 62.1-47. **Rules and regulations of State Board of Health.**—The Board may adopt rules and regulations governing waterworks, water supplies and pure water, subject to the provisions of Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia. Such rules and regulations shall be designed to protect the public health and guarantee a supply of pure water in relation to such matters. Except for the purposes stated, said rules and regulations shall not apply to structural design, location and construction of waterworks established by counties or under authorities created by counties unless requested by resolution of the governing bodies thereof.

Source: § 62-47.1.

Note: The first two sentences formerly were a single sentence. The words “Except for the purposes stated,” are added.

§ 62.1-48. Examination of water supplies.—The Board may, at any time during the planning, construction or operation thereof, cause examination of such water supplies to be made to ascertain whether the waterworks and water supplies supply pure water for human consumption and use.

Source: § 62-48.

Note: The words “, at any time during the planning, construction or operation thereof,” are added.

§ 62.1-49. Advice as to sources and purity.—The Board shall, upon requested, consult with and advise owners having or intending to have waterworks installed as to the most appropriate source of water supply and the best method of assuring pure water without any expense to such owners; but the Board shall not prepare plans, specifications or detailed estimates for any proposed improvement.

Source: § 62-49.

Note: The fourth word, “upon”, is substituted for the word “when”. The word “and” is added after the word “supply” in the third line.

§ 62.1-50. Permit from State Board of Health.—No owner shall establish, construct or operate any waterworks or water supply intended to supply water for drinking or domestic purposes to any person within the State from or by means of any waterworks without a written permit from the Board for the supplying of such water; except that this provision shall not apply to the extension of water pipes for the distribution of water. The application for such a permit shall be accompanied by a certified copy of the maps, plans and specifications for the construction of such waterworks or extensions, and a description of the source or sources from which it is proposed to derive the supply and the manner of storage, purification or treatment proposed for the supply previous to its delivery to consumers; and no other or additional source of supply shall subsequently be used for any such waterworks, nor any change in the manner of storage, purification and treatment of the water supply be made without an additional permit to be obtained in a similar manner from the Board.

Whenever application shall be made to the Board for a permit under the provisions of this section, it shall be the duty of the Board to examine the application without delay, and as soon as practicable thereafter, to issue the permit if, in its judgment, the proposed supply will furnish pure water; or to make an order stating the conditions under which the permit will be granted.

Source: § 62-50.

Note: At the beginning of the first sentence, the words “establish, construct or operate any waterworks or water supply system intended to” are added.

§ 62.1-51. Information to be furnished State Board of Health; bacteriological and other tests.—Whenever an investigation of any water supply or waterworks within the boundaries of the State is undertaken by the Board to ascertain whether pure water is being furnished to any person for drinking or domestic purposes, it shall be the duty of the owner in charge of the water supply or waterworks under investigation, to furnish, on demand, to the Board or the authorized agent of the Board, such information relative to the source or sources from which the supply is derived, and the manner of storage, purification or treatment of the water before its delivery to the consumers, as may be necessary or desirable for the determination of whether pure water is supplied, and the Board

may require any owner to submit regular samples of water for bacteriological or other tests, or may authorize the owner to submit the results of such tests if the laboratory making such tests is acceptable to the Board.

Source: § 62-51.

Note: No change.

§ 62.1-52. Right of entry to make investigation.—In making such investigation, authorized agents of the State Board of Health shall be allowed to enter any premises or buildings constituting a part of a water supply or water works for the purpose of inspecting same and ascertaining whether orders, as provided for under the following sections, are obeyed.

Source: § 62-52.

Note: No change.

§ 62.1-53. Ordering changes in water supply, waterworks, method of treatment, etc.; revocation of permit for noncompliance with order.—When, upon investigation, the Board finds that a water supply furnished to any person for drinking or domestic purposes is a menace to health or is not pure water, the Board shall have authority to make an order requiring such changes in the water supply or such alterations or extensions in the waterworks, or such change in the method or process of treatment or purification as the Board may deem necessary; provided, however, the owner of any waterworks in existence on July first, nineteen hundred and sixty-four, shall have the right to make any one or more of additional or supplemental charges for connections or additional charges for water to finance or defray the cost of such changes, alterations or extensions and to defray any extra cost incident to the maintenance and operation thereof, but nothing in this proviso shall be construed as preventing an owner from including in future contracts provision for such additional or supplemental charges. The Board shall name in its order such date for the completion of the required changes as it may deem reasonable and proper and it shall be the duty of the owner in charge of such water supply or waterworks to fully comply with the order within the time prescribed. In the event that the owner does not comply with the order issued pursuant to the provisions of this section, then the Board may revoke the owner's permit in accordance with the procedure set forth in § 62.1-55.

Source: § 62-53.

Note: No change.

§ 62.1-54. Injunction, etc., to prevent violation of orders of State Board of Health; additional charges for connections or water.—In addition to any other penalty or method available to the Board to aid in the enforcement of its orders under the provisions of this chapter, the Board may apply to an appropriate court for an injunction or other legal process to prevent or stop any practice, operation, action or inaction constituting a violation of any order issued by the Board under the provisions of this chapter and to enforce compliance with any such order; provided, however, the owner of any waterworks, in existence prior to June twenty-seven, nineteen hundred sixty-six, shall have the right to make any one or more of additional charges for connections or additional charges for water to finance or defray the cost of such changes, alteration or extensions caused as a result of any such order and the enforcement of any such order and to defray any extra cost incident to the maintenance and operation thereof,

but nothing in this proviso shall be construed as preventing an owner from including in future contracts provision for such additional or supplemental charges.

Source: § 62-53.1.

Note: No change.

§ 62.1-55. Revocation or amendment of permits.—(a) Every permit issued by the Board shall be revocable at any time it is shown by investigation that the waterworks can no longer be depended upon to furnish pure water or that the capacity of the waterworks is inadequate for the purpose of furnishing pure water or that the person, persons, institution, association, corporation or political subdivision holding the permit no longer is owner; provided, that a written notice is sent by the Board to the owner by certified mail, together with an order containing the reasons for revocation of the permit and its effective date, which effective date shall not be less than fifteen days from the date of said order of revocation.

(b) The Board may amend a permit where there is a change in the manner of storage, the treatment or the source of supply of the water at the permitted location, or for any other cause incident to the protection of the public health, or for the supplying of pure water, provided notice is given to the owner and a hearing held in accordance with the provisions of § 62.1-57.

(c) The Board shall revoke the permit issued to any owner who shall have abandoned the waterworks and discontinued supplying pure water.

Source: § 62-54.

Note: The words “or that the person, persons, institution, association, corporation or political subdivision holding the permit no longer is owner” have been added.

§ 62.1-56. Permit may be for definite period.—Any permit issued by the State Board of Health may be specified to run a certain definite period and the permit shall become inoperative at the expiration of the period of time without notice to that effect having been given by such Board.

Source: § 62-55.

Note: No change.

§ 62.1-57. Hearing on orders made by State Board of Health.—Whenever the Board shall issue an order to an owner, and the owner applies for a hearing, the Board shall appoint a time and place within the county, city or town where such waterworks exist, for a hearing on the subject. At such a hearing the Board shall attend in person, or shall depute a committee of the Board to attend, or shall authorize the State Health Commissioner to act for and in the name of the Board at such hearing. At any such hearing, all persons interested may appear, be heard and present the testimony of expert and other witnesses, and the Board may hear witnesses called upon its own motion.

The Board shall have power to issue, in the name of the Board subpoenas for the attendance of witnesses and the production of books, papers and maps, relative to the sources of the water supply and the manner of storage, purification or treatment of the supply before its delivery to any person, at any hearing in any part of the State as provided by law. The officer of the Board presiding at any hearing shall have power to administer oaths and certify to all official acts of the Board. After such hearings, the

Board shall issue such final order as in its judgment may be required to protect the public health or guarantee a supply of pure water, and notice of the final order shall be sent to all parties concerned.

Source: § 62-56.

Note: No change.

§ 62.1-58. **Appeals.**—Any owner dissatisfied with such order or final order of, or by the granting, revoking, amending or refusing to grant any permit by the Board, or believing that such order granting, revoking, amending or refusing to grant such permit is illegal or unreasonable or that the order is not necessary for the protection of the public health or the supplying of pure water may, within thirty days after the making of the order, or final order, or the granting, revoking, amending or refusing to grant, revoke or amend such permit, appeal to the circuit court of the county, or the corporation court of the city, wherein such water is to be used, and the court shall render a decision approving, setting aside or modifying the order or final order or stating the conditions for the granting of the permit.

Source: § 62-57.

Note: No change.

§ 62.1-59. **Penalty for failure to obtain permit, or violation of orders of State Board of Health; injunctions.**—(a) Failure on the part of any owner to obtain a written permit from the Board, as provided under § 62.1-50 or to comply fully with an order issued by the Board, under the preceding sections, shall be deemed a misdemeanor and punishable by a fine of not less than twenty nor more than one hundred dollars for each offense, each day in which such failure is made being considered to constitute a separate offense. All penalties under this section are to be recovered by the State in a civil action brought by the Attorney General in the name of the Commonwealth.

(b) In addition, the Board may apply to an appropriate court for an injunction or other legal process to prevent or stop the operation of any waterworks by an owner who does not have a valid permit issued by the Board.

Source: § 62-58.

Note: No change.

§ 62.1-60. **Mandamus against municipal corporation.**—Any municipal corporation disobeying any order duly issued by the State Board of Health, under the provisions of this chapter, may be compelled to obey same by mandamus or other appropriate remedy by any court of competent jurisdiction.

Source: § 62-59.

Note: No change.

§ 62.1-61. **When Attorney General to represent State Board of Health; special counsel.**—In all actions and proceedings for the enforcement of orders of the State Board of Health under the provisions of this chapter, the Attorney General shall represent the Board, except in proceedings to which the State or any of its public institutions is a party defendant, and in such cases, the Board is authorized to employ special counsel.

Source: § 62-60.

Note: No change.

§ 62.1-62. Emergency orders of State Health Commissioner.—(a) The Board by its rules and regulations may authorize the State Health Commissioner to issue emergency orders in any case where there is an imminent danger to the public health resulting from the operation of any waterworks or the source of a water supply. The Commissioner may order the immediate cessation of the operation of any waterworks or the use of any water supply or the correction of any condition causing the production or distribution of any water constituting an imminent danger to the public health. Emergency orders shall be effective for a period not exceeding sixty days at the determination of the Commissioner.

(b) An emergency order issued by the Commissioner may be appealed to the circuit or corporation court of the county or city wherein the alleged violation exists, and an emergency order shall remain in force pending an appeal only if the Commissioner satisfies the court that the public health is or will be in danger pending the final disposition of the appeal.

(c) Any person who violates an emergency order of the Commissioner shall be guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars or confinement in jail not exceeding six months, or both, and any violation in addition shall be subject to being enjoined as a nuisance.

Source: § 62-60.1.

Note: No change.

§ 62.1-63. Conflicting charter provisions.—Any provisions in any charter heretofore granted to an owner in conflict with the provisions of this chapter are hereby repealed; provided the provisions of any charter heretofore granted to a municipal corporation are not repealed.

Source: § 62-61.

Note: No change.

CHAPTER 5.

POTOMAC RIVER BASIN COMMISSION.

§ 62.1-64. Compact to create Potomac Valley Conservancy District and Interstate Commission on the Potomac River Basin.—The Governor is hereby authorized and directed to execute, on behalf of the Commonwealth of Virginia, a compact with the States of Maryland and West Virginia, the Commonwealth of Pennsylvania and the District of Columbia, or with such of the same as shall, by their respective legislative bodies, enact legislation with like provisions to those of this chapter, but not with such of the same as shall not so enact such legislation, which compact shall be in form substantially as set out in the succeeding section.

Source: § 62-62.

Note: No change.

§ 62.1-65. Form and terms of compact.—Whereas it is recognized, that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate stream; and

Whereas the Congress of the United States has given its consent to the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a com-

compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac river and the main and tributary streams therein, for the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of the Potomac drainage area by sewage and industrial and other wastes:

Now, therefore, the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac Valley Conservancy District, hereinafter designated the Conservancy District, comprising all of the area drained by the Potomac river and its tributaries; and also, do hereby create the Interstate Commission on the Potomac River Basin, hereinafter designated the Commission, under the articles of organization as set forth below.

Article I.

The Interstate Commission on the Potomac River Basin shall consist of three members from each signatory body and three members appointed by the President of the United States. Such Commissioners, other than those appointed by the President, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed and shall serve without compensation from the Commission but shall be paid by the Commission their actual expenses incurred and incident to the performance of their duties.

(A) This Commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice-chairman, shall adopt suitable by-laws, shall make, adopt, and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The Commission shall appoint and, at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The Commission may maintain one or more officers for the transaction of its business and may meet at any time or place within the area of the Conservancy District.

(C) The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The Commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of accounts of the Commission.

(D) A quorum of the Commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least a majority of the members of the Commission; provided, however, that no action of the Commission relating to policy shall be binding on any one of the signatory bodies unless at least two of the Commissioners from such signatory body shall vote in favor thereof.

Article II.

The Commission shall have the power and its duties shall be:

(A) To co-ordinate, tabulate, and summarize technical and other data now available, or as shall become available in the future from any source, on the pollution of the streams of the Conservancy District and on the character and conditions of such streams, and to prepare reports thereon annually and at such other times as may be deemed advisable by the Commission.

(B) To supplement existing information and data, and to secure new data by such investigations, analyses, or other means as may be necessary to secure adequate information on the character and condition of the streams of the Conservancy District as they now exist or may be affected by the future discharge of sewage and industrial and other wastes into the stream.

(C) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other interested commissions and similar organizations for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams in the Conservancy District.

(D) To disseminate to the public information on the aims and purposes of the Commission and on the harmful and uneconomical results of stream pollution, through the issuance of bulletins, circulars, correspondence, literature and reports.

(E) To cooperate with other organizations engaged in fact-finding and research activities on the treatment of sewage and industrial wastes or other wastes, and if deemed advisable, to institute and conduct such research and fact-finding activities.

(F) To make and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the Conservancy District, and also, for cleanliness of the various streams in the Conservancy District.

Article III.

The moneys necessary to finance the Commission in the administration of its business in the Conservancy District shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contribution shall be based on such factors as population, the amount of industrial and domestic pollution; and a flat service charge, as shall be determined from time to time by the Commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies. And, further, provided that the total of such sums from signatory bodies shall not exceed a total of \$30,000 per annum.

Article IV.

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the Conservancy District.
2. The enactment of adequate and, in so far as is practicable, uniform legislation for the abatement and control of such pollution.
3. The appropriation of biennial sums on the proportionate basis as set forth in Article III.

Article V.

This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and by the Commissioners of the District of Columbia, and approved by the Congress of the United States; provided, however, that this compact shall not be effective as to any signatory body until ratified thereby.

Any signatory body may by legislative act, after one year's notice to the Commission, withdraw from this compact.

Source: § 62-63.

Note: No change.

§ 62.1-66. Potomac River Basin Commission of Virginia.—There is hereby created a Commission of three members to be known as the Potomac River Basin Commission of Virginia, but the Commission shall not come into being unless and until the Governor shall have executed the compact hereinabove authorized.

Source: § 62-64.

Note: No change.

§ 62.1-67. Appointment, terms and qualifications of members.—If and when the Governor shall have executed such compact, the members of the Commission shall be appointed by the Governor and shall hold office for terms of four years each, subject to suspension or removal by the Governor. Appointments to fill vacancies shall be made for the respective unexpired terms. One of the members so appointed shall be a resident of the Potomac river drainage basin, but if such member should cease to be a resident of the basin his term of office shall thereupon terminate and his office become vacant. One member shall be appointed from the membership of the Virginia Commission on Interstate Cooperation, but if such member should cease to be a member of the Virginia Commission on Interstate Cooperation his term of office shall thereupon terminate and his office become vacant. The other member shall be appointed at large. One of the members shall be designated by the Governor as chairman.

Source: § 62-65.

Note: No change.

§ 62.1-68. Expenses of members.—The members of the Commission shall be paid their expenses incurred in the performance of their duties as such in such manner and amount as shall be provided in the compact hereinabove authorized to be executed.

Source: § 62-66.

Note: No change.

§ 62.1-69. Duties of Commission.—The Potomac River Basin Commission of Virginia shall, if and when it shall come into existence as hereinabove provided, act jointly with commissions appointed for a like purpose by the States of West Virginia and Maryland, the Commonwealth of Pennsylvania and the District of Columbia, or by such of the same as shall enter into the compact and with an additional three members to be appointed by the President of the United States, as a unit of the Interstate Commission on the Potomac River Basin which shall be constituted as provided by the compact hereinabove mentioned. The Potomac River Basin Commission of Virginia shall perform such further duties as shall be provided by the compact.

Source: § 62-67.

Note: No change.

CHAPTER 6.

OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§ 62.1-70. Governor to execute Ohio River Valley Water Sanitation Compact.—The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, the Ohio River Valley Water Sanitation Compact which the Commonwealth of Virginia has been invited to join. The Compact is in the words and figures set out in the succeeding section.

Source: § 62-67.1.

Note: No change.

§ 62.1-71. Form and terms of Compact.—Whereas, a substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio River;

Whereas, the rapid increase in the population of the various metropolitan areas situated within the Ohio drainage basin and the growth in industrial activity within that area have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

Whereas, the control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof and can best be accomplished through the cooperation of the states situated therein, by and through a joint or common agency;

Now, therefore, the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia, do hereby covenant and agree as follows:

Article I.

Each of the signatory states pledges to each of the other signatory states faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the Ohio River Basin which flow through, into or border upon any of such signatory states, and in order to effect such object agrees to enact any necessary legislation to enable each such state to police and maintain the waters of that basin in a satisfactory sanitary condition, available for safe and satis-

factory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

Article II.

The signatory states hereby create a district to be known as the "Ohio River Valley Water Sanitation District," hereinafter called the District, which shall embrace all territory within the signatory states, the water in which flows ultimately into the Ohio River, or its tributaries.

Article III.

The signatory states hereby create the "Ohio River Valley Water Sanitation Commission," hereinafter called the Commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states or by act or acts of the Congress of the United States.

Article IV.

The Commission shall consist of three commissioners from each state, each of whom shall be a citizen of the state from which he is appointed, and three commissioners representing the United States government. The commissioners from each state shall be chosen in the manner and for the terms provided by the laws of the state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the state from which he shall be appointed. The commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any state or of the United States government.

Article V.

The Commission shall elect from its number a chairman and vice chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this Compact into effect, and shall fix and determine their duties, qualifications and compensation. It shall adopt a seal and suitable by-laws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more officers within the district for the transaction of its business, and may meet at any time or place. One or more commissioners from a majority of the member states shall constitute a quorum for the transaction of business.

The Commission shall submit to the governor of each state, at such time as he may request, a budget of its estimated expenditures, for such period as may be required by the laws of such state for presentation to the legislature thereof.

The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and such books of account shall be open at

any reasonable time to the inspection of such representatives of the respective signatory states as are duly constituted for that purpose.

On or before the first day of December of each year, the Commission shall submit to the respective governors of the signatory states a full and complete report of its activities for the preceding year.

The Commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory states, except by and with the authority of the legislature thereof.

Article VI.

It is recognized by the signatory states that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the district due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the district. The guiding principle of this Compact shall be that pollution by sewage or industrial wastes originating within a signatory state shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

All sewage from municipalities or other political subdivisions, public or private institutions, or corporations, discharged or permitted to flow into these portions of the Ohio River and its tributary waters which form boundaries between, or are contiguous to, two or more signatory states, or which flow from one signatory state into another signatory state, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids and the removal of not less than forty-five per centum of the total suspended solids; provided that, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, due notice and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, to such degree as may be determined to be necessary by the Commission after investigation, due notice and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one state shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately above the confluence.

The Commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article.

Article VII.

Nothing in this Compact shall be construed to limit the powers of any signatory state, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

Article VIII.

The Commission shall conduct a survey of the territory included within the district, shall study the pollution problems of the district, and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the Commission shall confer with any national or regional planning body which may be established, and any department of the federal government authorized to deal with matters relating to the pollution problems of the district. The Commission shall draft and recommend to the governors of the various signatory states uniform legislation dealing with the pollution of rivers, streams and waters and other pollution problems within the district. The Commission shall consult with and advise the various states, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly, with regard to the construction of plants for the disposal of sewage, industrial and other waste. The Commission shall, more than one month prior to any regular meeting of the legislature of any state which is a party thereto, present to the governor of the state its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes

Article IX.

The Commission may from time to time after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio River, or any other river, stream or water, any part of which constitutes any part of the boundary line between any two or more of the signatory states, or into any stream any part of which flows from any portion of one signatory state through any portion of another signatory state. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise dispose of. The Commission shall give reasonable notice of the time and place of the hearing to the municipality, corporation or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each or not less than a majority of the signatory states; and no such order upon a municipality, corporation, person or entity in any state shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

It shall be the duty of the municipality, corporation, person or other entity to comply with any such order issued against it or him by the Commission, and any court of general jurisdiction or any United States district court in any of the signatory states shall have the jurisdiction, by mandamus, injunction, specific performance or other form of remedy to enforce any such order against any municipality, corporation or other entity domiciled or located within such state or whose discharge of the waste takes place within or adjoining such state, or against any employee, department or subdivision of such municipality, corporation, person or other entity; provided, that such court may review the order and affirm, reverse or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The Commission or, at its request, the Attorney General or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

Article X.

The signatory states agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the governors of the signatory states, one-half of such amount to be prorated among the several states in proportion of their population within the district at the last preceding federal census, the other half to be prorated in proportion to their land area within the district.

Article XI.

This Compact shall become effective upon ratification by the legislatures of a majority of the states located within the district and upon approval by the Congress of the United States; and shall become effective as to any additional states signing thereafter at the time of such signing.

Source: § 62-67.2.

Note: No change.

§ 62.1-72. Effect of signing Compact.—The State of Virginia, hereby through the signature of its Governor hereto, adds its name to those of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia as the parties to and signatory states of the foregoing Ohio River Valley Water Sanitation Compact, and hereby covenants and agrees as hereinabove set forth in such Compact.

The signature by the Governor of Virginia, to the foregoing Compact on behalf of the Commonwealth of Virginia, shall bind the Commonwealth and indicate its assent to and acceptance of the terms and conditions of such Compact.

Source: § 62-67.3.

Note: No change.

§ 62.1-73. Appointment and removal of Virginia members of Commission.—In pursuance of Article IV of said Compact there shall be three members of the Ohio River Valley Water Sanitation Commission from Virginia. The members of the Commission shall be appointed by the Governor, subject to confirmation by the General Assembly, from the membership of the State Water Control Board continued under § 62.1-19. The terms of the commissioners shall be coincident with that of their terms upon the State Water Control Board. All vacancies in the office of any such commissioner shall be filled by appointment by the Governor.

Any commissioner may be removed from office by the Governor.

Source: § 62-67.4.

Note: Internal section reference has been conformed.

§ 62.1-74. Powers of Commission; duties of State officers, departments, etc.; jurisdiction of certain courts; enforcement.—Subject to the terms of such Compact there is hereby granted to the Commission and commissioners thereof all the powers provided for in the Compact, and all the powers necessary or incidental to the carrying out of the Compact in every particular. All officers of this State are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of the Compact in every particular, it being hereby declared to be the policy of this State to perform and carry out the Compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in

the State government or administration of this Commonwealth are hereby authorized and directed at convenient times and upon request of the Commission to furnish it with information and data possessed by them or any of them and to aid the Commission by loan of personnel or other means lying within their legal powers, respectively.

The courts of record of this Commonwealth are hereby granted the jurisdiction specified in Article IX of the Compact, and the Attorney General and other law enforcing officers of this Commonwealth are hereby granted the power to institute any action for the enforcement of the orders of the Commission as specified in Article IX of the Compact.

Source: § 62-67.5.

Note: No change.

§ 62.1-75. Powers granted Commission are supplemental.—Any powers herein granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in the Commission by other laws of this Commonwealth or by the laws of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, West Virginia, Tennessee, or by Congress, or by the terms of the Compact.

Source: § 62-67.6.

Note: No change.

§ 62.1-76. Expenses of members.—The commissioners shall be reimbursed out of moneys appropriated for such purposes all sums which they necessarily expend in the discharge of their duties as members of such Commission.

Source: § 62-67.7.

Note: No change.

§ 62.1-77. Officers and employees; meetings.—The Commission shall elect from its membership a chairman, and may also select a secretary who need not be a member. The Commission may employ such assistants as it deems necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the Commission and paid out of the State treasury out of funds appropriated for such purposes upon the requisition of the Commission.

The Commission shall meet at times and places agreed upon by the commissioners or upon call of its chairman.

Source: § 62-67.8.

Note: No change.

§ 62.1-78. Chapter effective in due course, upon signature of Governor.—This chapter shall become effective in due course provided the Governor signs the Compact heretofore referred to on behalf of the Commonwealth.

Source: § 62-67.9.

Note: No change.

§ 62.1-79. Appropriations.—The sums appropriated to carry out the purposes of this chapter shall be used to effect its provisions and to pay Virginia's proportionate part of the budget of the Ohio River Valley Water Sanitation Commission in accordance with Article X of the Compact. No part of any such appropriation shall be available for expenditure

in whole or in part unless and until the Comptroller shall be annually satisfied that each of the governmental entities having representatives on the Ohio River Valley Water Sanitation Commission has provided for the expenses thereof at least as much as is appropriated by the General Assembly of Virginia for the purposes of this chapter.

Source: 62-67.10.

Note: No change.

CHAPTER 7.

WATER POWER DEVELOPMENT, CONSERVATION OF HYDRO-ELECTRIC POWER DAMS AND WORKS

§ 62.1-80. **Declaration of public policy.**—In order to conserve and utilize the otherwise wasted energy from the water powers in this State, it is hereby declared to be the policy of the State to encourage the utilization of the water resources in the State to the greatest practicable extent and to control the waters of the State, as herein defined, and also the construction or reconstruction of a dam in any rivers or streams within the State for the generation of hydro-electric energy for use or sale in public service, all as hereinafter provided.

Source: § 62-68.

Note: No change.

§ 62.1-81. **“Waters of the State” defined.**—The term “waters of the State” as used in this chapter shall mean: (a) Any stream or that portion of any stream in this State which prior to June twenty-first, nineteen hundred and thirty-two has been declared navigable by any unrepealed statute of this State, or (b) any stream on that portion of any stream in this State, the bed of which is owned by the Commonwealth, or (c) those parts of streams or other bodies of water in this State which either in their natural or improved condition, notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids, compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows or rapids, and also any stream or part thereof in this State other than those above mentioned in this subdivision in which the construction of any dam or works as authorized by this chapter would affect the interests of interstate or foreign commerce, or (d) that portion of any river or stream flowing between the high-water mark on the Virginia shore and the low-water mark when such low-water mark constitutes the boundary line between Virginia and another state.

Source: § 62-69.

Note: No change.

§ 62.1-82. **Control and regulation by State Corporation Commission.**—The control and regulation on the part of the State of the development of the waters of the State shall be paramount, and shall be exercised through the agency of the State Corporation Commission, sometimes in this chapter referred to as the Commission; provided, however, nothing contained in this chapter shall deprive any riparian owner of any right which he may have, under existing law, except by due and further process of law upon the exercise of eminent domain and upon the payment of just compensation for any such right.

Source: § 62-70.

Note: No change.

§ 62.1-83. **Dams across waters of State.**—No person, firm, association or corporation, private or municipal, proposing to construct or reconstruct any dam across or in the waters of the State, as defined in § 62.1-81, or a dam in any rivers or streams within the State when such dam is for the purpose of generating hydro-electric energy for use or sale in public service, shall begin the construction or reconstruction of any such dam unless and until the provisions of this chapter shall have been complied with, and every such dam shall in every respect be subject to the provision of this chapter and such other general laws of the State as may be applicable thereto. Nor shall any dam constructed or reconstructed after July first, nineteen hundred and thirty-two, in any waters, rivers or streams within the State, without a license under this chapter, be utilized at any time for the purpose of generating hydro-electric energy for use or sale, directly or indirectly, in public service, unless and until licensed or permitted so to do by order of the State Corporation Commission, after hearing, and finding that the public interest will be thereby promoted or will not be detrimentally affected.

Source: § 62-71.

Note: Internal section reference has been conformed.

§ 62.1-84. **What "dam" includes.**—The word "dam" as used in this chapter is intended to include the appurtenant pondage area on any part thereof.

Source: § 62-72.

Note: No change.

§ 62.1-85. **License required to construct dam; application.**—The construction or reconstruction of any such dam as is mentioned in § 62.1-83 shall not be begun until the person, firm, association or corporation, private or municipal, proposing to construct or reconstruct the same shall first obtain a license so to do from the State Corporation Commission. The application for such license shall be filed with the Commission and in it all the essential facts shall be stated to enable the Commission to pass upon its merits. A copy of such application shall also be filed by the applicant with the Director of Conservation and Economic Development within ten days after filing such application with the State Corporation Commission. Each application for license shall be accompanied by such maps, plans and other information as may be necessary to give a clear and full understanding of the proposed scheme of development, and of dams, generating stations or other major structures, if any, involved therein.

Source: § 62-73.

Note: Internal section reference has been conformed. "Economic" is added.

§ 62.1-86. **Notice of hearing on application.**—As soon as practicable after the filing with the State Corporation Commission of any application for a license under the provisions of this chapter, the Commission shall set a day for a public hearing upon such application, and the applicant shall give notice to the public of the application, in form to be prescribed or approved by the Commission, by publication once in each week for four successive weeks prior to such hearing in a newspaper or newspapers of general circulation published in the city or county wherein the proposed construction, or the greater part thereof, is to be made and any adjoining or connecting county or city affected and every other county downstream from such development through which the stream runs to its mouth, if there be such newspaper, and, if there be no such news-

paper, then by publishing the same in a newspaper of general circulation in such county or counties or cities affected. In such notice the date fixed by the Commission for the public hearing on the application shall be stated.

Source: § 62-74.

Note: No change.

§ 62.1-87. Proceedings at hearing.—At such public hearing the applicant and any other interested person, firm, association or corporation shall be given an opportunity to present facts, evidence and argument for and against the granting of the application.

Source: § 62-75.

Note: No change.

§ 62.1-88. Determination and investigation by Commission.—Before acting upon any application, the Commission shall weigh all the respective advantages and disadvantages from the standpoint of the State as a whole and the people thereof and shall make such investigation as may be appropriate as to the effect of the proposed construction upon any cities, towns and counties and upon the prospective development of other natural resources and the property of others.

Source: § 62-76.

Note: No change.

§ 62.1-89. When license granted.—If the Commission shall be of the opinion from all the evidence before it that, in pursuance of the herein expressed policy of the State to encourage water power development, the plans of the applicant provide for the greatest practicable extent of utilization of the waters of the State for which the application is made and that the applicant is financially able to construct and operate the proposed dam and works and that the general public interest will be promoted thereby, it shall grant the license to construct and operate the proposed dam and works.

Source: § 62-77.

Note: No change.

§ 62.1-90. Rejection of application; requiring applicant to modify plans.—If the Commission be of the opinion, from the evidence before it, that the prospective scheme of development is inadequate or wasteful or that the applicant is financially unable to construct and operate the proposed dam and works, or that it is prejudicial to the public interest, the Commission may require the applicant to modify the plans for the development in such manner as may be specified by the Commission or the Commission may reject the application.

Source: § 62-78.

Note: No change.

§ 62.1-91. Terms and conditions of license; preventing obstruction of navigation or flow.—In granting any license the Commission may include in the grant thereof such terms and conditions with respect to the character of construction, operation and maintenance of the proposed dam and works as may be reasonably necessary in the opinion of the Commission in the interest of public safety; and in granting every such license the Commission shall determine what provision, if any, shall be made by the licensee to prevent the unreasonable obstruction of then exist-

ing navigation or any unreasonable interference with stream flow. In the case of a dam located across any navigable waters of the United States, the owner shall make such provision for navigation as is required by the Secretary of the Army of the United States.

Source: § 62-79.

Note: No change.

§ 62.192. Priority of location or appropriation; notice to owners of existing developments.—No priority of location or appropriation shall be recognized by the Commission in its consideration of any application for a license, under this chapter, except that in case of an application for a license for any reconstruction or enlargement of any existing development, the owner of such development shall be entitled to priority over any other applicant for a license for the construction of a development which would materially affect such existing development, and every such applicant for a license under this chapter shall give notice of his application within ten days after filing of the same with the State Corporation Commission to every other person, firm, association or corporation owning any other development which might be affected thereby, whose application for a license under this chapter would be entitled to priority if such application were filed. In case of conflict between two or more applicants, the Commission may grant the license to such applicant as it may deem best in the light of the considerations herein specified.

Source: § 62-81.

Note: No change.

§ 62.1-93. Time for construction of proposed dam and works.—With respect to any license which may be granted, the Commission shall prescribe a time limit of not more than two years after the granting of such license for the commencement of the construction of the proposed dam and works of the applicant and of not more than five years after the granting of such license for the completion of such dam and works, either or both of which initial time limits may be extended for good cause from time to time in the discretion of the Commission.

Source: § 62-82.

Note: No change.

§ 62.1-94. Duration of licenses; acquisition of developments by State.—All licenses granted under the provisions of this chapter shall remain in effect for a period of fifty years from and after the date of granting thereof. From and after the expiration of such terms of fifty years the licensee, its successors and assigns, shall hold the property and rights acquired under the authority of this chapter under an indeterminate license, which shall continue until such property and rights have been purchased by the State, or until the same have been acquired by the State by due process of law; provided that the right of the State to take over, maintain and operate any development licensed under this chapter at any time by condemnation proceedings, upon payment of just compensation, is hereby expressly reserved.

Source: § 62-83.

Note: No change.

§ 62.1-95. Value of license not to be estimated in valuation for rate making, etc.; intangible water power value.—In any valuation, for the purpose of rate making or for the purpose of acquisition by the State

by condemnation or by purchase as above provided for, of the property included in any development licensed under this chapter, there shall not be claimed by the licensee or allowed by the State Corporation Commission any value for the license granted by the State for such development, or for the right of the licensee to utilize the natural resources owned by the State and used by the licensee in connection with the construction, maintenance and operation of such development, nor shall there be claimed or allowed any appreciation on the intangible water power value in excess of the fair intangible water power value at the time of the granting of the license for the construction of such development, such intangible water power value being distinguished from the value of land or an interest in land, or the right to flood or damage or otherwise utilize land, or to interfere with or to divert water, or to otherwise damage a riparian owner or owners of other real estate. The provisions contained in this section are hereby made an express condition of every license granted hereunder and to the exercise by the licensee of the right of eminent domain in this chapter conferred.

Source: § 62-84.

Note: No change.

§ 62.1-96. Transfer or assignment of license.—No voluntary transfer or assignment of any license granted under this chapter shall be made to any transferee or assignee unless he be financially able to carry out the project or development, nor shall any such voluntary transfer or assignment be valid or of any effect whatsoever unless the same shall be in writing and a copy thereof be filed with, and approved by, the Commission, provided that any mortgage or trust deed, or foreclosure under any mortgage or deed of trust, or any judicial or tax sale, merger or consolidation, or any sale of the greater part of the property of the licensee in the State, shall not be deemed a voluntary transfer within the meaning of this chapter. Any successor or assignee of the rights of the licensee, whether by voluntary transfer, judicial sale, foreclosure sale or otherwise, shall be subject to all of the obligations, liabilities and conditions incident to such license to the same extent as though such successor or assignee were the original licensee.

Source: § 62-85.

Note: No change.

§ 62.1-97. Proceedings on violation of terms of license or of provisions of chapter or regulations.—In event of violation by the licensee of any of the terms of a license, or for the purpose of remedying by injunction, mandamus or other process any act of commission or omission by the licensee in violation of any of the provisions of this chapter, or of any lawful regulation or order promulgated in pursuance thereof, the Attorney General of this State shall, upon request of the Commission, institute proceedings in the Circuit Court of the City of Richmond in the name of the Commonwealth at the relation of the Commission for the purpose of compelling the licensee to comply with the provisions of the license or of this chapter, or for the purpose of revoking the right of the licensee to proceed further under the license, or similarly as to a specified portion or portions of the development which is under license. The court shall have jurisdiction over all of the above mentioned proceedings and shall be empowered to issue and execute all necessary process and to make and enforce all writs, orders and decrees to compel compliance with the lawful orders and regulations of the Commission and to compel the performance of any condition imposed under the provisions of this chapter. If a decree is entered by the court revoking the

right of the licensee to proceed further with the development under license, or similarly with respect to a specified portion or portions of the development under license, the court is empowered to sell at public sale to the highest responsible bidder the property and rights of the licensee used or useful in connection with such development or such specified portion thereof, to distribute the proceeds to the parties entitled thereto and to make and enforce such further or other orders and decrees as equity and justice may require. At such sale or sales the vendee shall succeed to the rights and privileges of the licensee with respect to such development or such specified portion thereof and shall perform all the duties of the licensee under the license and assume all such outstanding obligations and liabilities of the licensee as the court may deem equitable in the premises.

Source: § 62-86.

Note: No change.

§ 62.1-98. Right of eminent domain of public service corporations.—In addition to any right or power of eminent domain which it may have under existing law, every public service corporation engaged in the development of water power in this State for the production, sale and supply of hydro-electric power and energy to the public shall be vested with the right of eminent domain to the full extent requisite for the acquisition of all lands, property and rights necessary for the purpose of the construction, enlargement, maintenance or operation of any dam, reservoir, power station and/or other structures of any such water power development, subject to the following provisions:

(a) Such corporation may, by the exercise of such right for such purpose, acquire all necessary lands, property and rights of whatsoever nature, whether or not such lands, property or rights have been theretofore appropriated or devoted, or sought to be appropriated or devoted to public use, including but not restricted to, the lands, property and rights necessary for any storage, diversion, regulation or detention, and/or interference with the flow of any water and for any waterway and including also, but not restricted to, any lands, structures, property or rights owned, used or held by or for public or private, religious, charitable, educational or cemetery purposes; any dwelling houses and any public or private roads and bridges, and any other property, public or private, when necessary for such purpose; provided, however, that the right of eminent domain under this section shall not be available against existing public-carrier railroads; and provided further that, in the event of the condemnation under this chapter of any roads or bridges, the Commissioners in assessing the compensation and damages therefor, shall consider the cost of relocating and constructing such roads or bridges upon other reasonable convenient locations, and the damage, if any, to persons and corporations because of relocation and construction. No such corporation shall impair the drinking water supply of any city or town or acquire any municipal electric light and power or water plant by virtue of any additional powers conferred by this chapter; provided further that the provisions of this section shall not be construed to authorize the acquisition by condemnation or otherwise of any streets or alleys or portions thereof in incorporated cities or towns.

(b) When, in the operation of any dam, power station or other structure of a water power development, any such public service corporation interferes, to an extent beyond its common-law riparian rights, with the flow of water downstream from such structure and by reason of such interference any property or riparian right, or any part thereof or interest

therein, is destroyed or damaged, such corporation may exercise the right of eminent domain for the purpose of acquiring such property, right or interest so destroyed or of ascertaining and paying just compensation for any such damage.

(c) In connection with the exercise of the right of eminent domain over public and private cemeteries, such corporation shall also have the right to acquire by condemnation proceedings other lands to which to remove the bodies and monuments or other structures from such public or private cemeteries. All the rights of the owners, including the State, in and to the lands in such cemeteries shall pass to and vest in such corporation and the title to the lands acquired for the removal of such cemeteries shall vest in the former owners and such others as may have rights therein of such cemeteries so removed. However, before such corporation may flood or otherwise utilize any such cemetery, it shall remove the bodies and monuments or other structures to the lands acquired for such purpose and reinter the bodies and reset the monuments, under the direction and to the satisfaction of the court in which such condemnation proceedings are brought. If the parties in interest fail to agree as to the location and area of the additional lands to be acquired in which to reinter the bodies and on which to rest the monuments and other structures, the same shall be determined by the court.

(d) For the purpose of relocating any railway, pipe line, wire line, road or bridge occupying the area on which any such water power development or enlargement thereof is to be located, such corporation may acquire by the exercise of the right of eminent domain, any needful additional lands or other property, whether within or without the area upon which such water power development or enlargement thereof is to be located, and shall have the right for such purpose and shall convey such lands or other property or rights to the owner of such railway, pipe line, wire line, road or bridge.

(e) In all cases of the exercise of such right of eminent domain just compensation shall be paid to the owners and tenants of the property taken or damaged, in the manner provided by law for all property taken or damaged. The proceedings for this purpose shall be in accordance with Title 25 and other provisions of law. As to any part of the real estate sought to be taken for any of the purposes authorized in this chapter, such corporation may describe in its application for condemnation an estate or interest therein of a fee or less than a fee and, upon payment therefor, such estate or interest as is stated and described in such application shall vest in such corporation; but when less than a fee is taken, the commissioners in assessing damages shall take into consideration the actual damage that is done or that may be done to the fee by such taking, including the use to which the property so taken will be put by such corporation. Provided, however, that nothing contained in § 62.1-97 shall deprive any owner of property of any right to receive just compensation and damages as provided by law, upon the exercise of the right of eminent domain by any licensee under this chapter.

(f) Any public service corporation which shall exercise any of the additional powers of eminent domain granted in this act and not existing under the law in effect January first, nineteen hundred and twenty-eight, shall thereby be conclusively deemed to have agreed, as a condition precedent to the exercise of such powers, to be bound by all of the provisions of this chapter.

Source: § 62-87.

Note: Internal section reference is conformed.

§ 62.1-99. Water power developments constructed or acquired prior to certain date.—Section 12 of Chapter 424 of the Acts of 1928, approved March 24, 1928, as amended by Chapter 346 of the Acts of 1932, approved March 26, 1932, codified as § 3581(13) of Michie Code 1942 and as § 62-88 of the Code of Virginia of 1950, relating to water power developments constructed or acquired prior to January first, nineteen hundred and twenty-eight, and being utilized on that date or within two years prior thereto, or upon which, between January first, nineteen hundred and twenty-three, and June seventeenth, nineteen hundred and twenty-eight, not less than fifty thousand dollars had been expended, is continued in effect.

Source: § 62-88.

Note: The language “and as § 62-88 of the Code of Virginia of 1950” is added.

§ 62.1-100. Rules of Commission; reports; employment of experts, etc.—The Commission shall have the power to make such reasonable rules and regulations as may be necessary to administer the provisions of this chapter and to require licensees hereunder to render to it from time to time such reports as may be reasonably necessary. It shall have the power to employ expert engineers or other experts or persons to examine and report upon projects as proposed in applications for licenses, or the structures thereof, or upon plans submitted after the issuance of licenses covering additional details or succeeding stages of construction.

Source: § 62-89.

Note: No change.

§ 62.1-101. Licenses not affected by alteration, amendment or repeal of chapter.—No alteration, amendment or repeal of this chapter shall, without the consent of the licensee, affect any license granted under the provisions of this chapter, nor shall it affect the provisions, terms and conditions of such license nor the rights of the licensee thereunder.

Source: § 62-92.

Note: No change.

§ 62.1-102. Alteration or amendment of license.—The provisions, terms, and conditions of any license may be altered or amended at any time by mutual consent of the licensee and the Commission, to the extent such alteration or amendment is not in conflict with the then existing law of the State.

Source: § 62-93.

Note: No change.

§ 62.1-103. Jurisdiction of United States.—Nothing contained in this chapter shall be so construed as to interfere with the exercise of lawful jurisdiction of the government of the United States, or its duly constituted agencies, over the waters of the State as herein defined.

Source: § 62-94.

Note: No change.

CHAPTER 8.

IMPOUNDMENT OF SURFACE WATERS.

§ 62.1-104. Definitions.—(1) Except as modified below, the definitions contained in Title 1 shall apply in this chapter.

(2) "*Commissioner*" means the Commissioner of Water Resources.

(3) "*Impounding structure*" means a man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used for the authorized storage of flood waters for subsequent beneficial use.

(4) "*Watercourse*" means a natural channel having a well defined bed and banks and in which water flows when it normally does flow. For the purposes hereof they shall be limited to rivers, creeks, streams, branches, and other water courses which are nonnavigable in fact and which are wholly within the jurisdiction of the State.

(5) "*Riparian land*" is land which is contiguous to and touches a watercourse. It does not include land outside the watershed of the watercourse. Real property under common ownership and which is not separated from riparian land by land of any other ownership shall likewise be deemed riparian land, notwithstanding that such real property is divided into tracts and parcels which may not bound upon the watercourse.

(6) "*Riparian owner*" is an owner of riparian land.

(7) "*Average flow*" means the average discharge of a stream at a particular point and normally is expressed in cubic feet per second. It may be determined from actual measurements or computed from the most accurate information available.

(8) "*Diffused surface waters*" are those which, resulting from precipitation, flow down across the surface of the land until they reach a watercourse, after which they become parts of streams.

(9) "*Flood waters*" means water in a stream which is over and above the average flow.

(10) "*Court*" means the circuit court of the county or corporation court of the city in which an impoundment is located or proposed to be located.

Source: § 62-94.1.

Note: No change.

§ 62.1-105. **Impoundment or diffused surface waters.**—Diffused surface waters may be captured and impounded by the owner of the land on which they are present and, when so impounded, become the property of that owner. Such impoundment shall not cause damage to others.

Source: § 62-94.2.

Note: No change.

§ 62.1-106. **When flood waters may be captured and stored by riparian owners.**—Water in watercourses which is over and above the average flow of the stream may, upon approval, be captured and stored riparian owners for their later use under the following conditions:

As a result of the capture and storage of such waters, there will be no damage to others.

(2) The title to the land on which the impounding structure and the impounded water will rest are in the person or persons requesting the authority.

(3) All costs incident to such impoundment, including devices above and below for indicating average flow, will be borne by the person or persons requesting the authority.

(4) For impoundments with a capacity of more than fifty acre-feet of storage all construction is approved by a registered civil engineer or a registered agricultural engineer. For those with capacities of fifty acre-feet, or less, of storage all construction will be approved by a registered civil engineer or a registered agricultural engineer or by some other competent person.

(5) Those requesting the authority will insure that the flow below the impoundment is equal to:

(a) at least the average flow when the flow immediately above the impounding structure is greater than the average flow, or

(b) at least the flow immediately above the impounding structure when that flow is equal to or less than the average flow.

(6) If needed, provision will be made in the impounding structure for an adequate spillway and for means of releasing water to maintain the required flow downstream.

(7) If for purposes of irrigation, the quantity of water stored (exclusive of foreseeable losses) will not exceed that required for a period of twelve months to irrigate the cleared acreage owned by those participating in the undertaking and lying in the watershed of the stream from which the water is taken.

(8) All structures and equipment incident to such impoundment will be maintained in safe and serviceable condition by the owners and all parts thereof in a watercourse will be removed when no longer required for the purpose.

(9) Priority to the right to store flood waters, as outlined, will go to up stream riparian owners.

(10) Those impounding flood waters will, upon request, provide appropriate information concerning the impoundment to the Commissioner and State Water Control Board.

Source: § 62-94.3.

Note: No change.

§ 62.1-107. Application for leave to store flood waters; notice to interested persons and to State Water Control Board.—Any riparian owner, or riparian owners, desiring to store flood waters under the conditions specified in § 62.1-106 may apply for leave so to do to the circuit court of the county or corporation court of the city wherein the impounding structure is proposed to be built. Such application shall be made by petition filed in the clerk's office of the court. It shall set forth the name and address of the riparian owner, or owners, the purpose of the proposed impoundment, the desired storage capacity and the basis on which determined, the stream and the point on it from which flood waters are proposed to be taken, the estimated cost of the project, and an agreement to abide by the provisions of § 62.1-106. It shall be accompanied by a plat or sketch of the riparian property which he or they own and on which is shown the site of the impounding structure and the area to be flooded by the impounded water. The plat or sketch shall include data sufficient to permit the location of the property on the official highway map of the county or a map of the city or town where appropriate. It shall also be accompanied by a plan of the proposed impounding structure on which appears the approval of the plan by a registered civil engineer or registered agricultural engineer, (or other competent person

for storage capacities of fifty acre-feet or less) and agreement thereto by the riparian owner. All interested persons shall be given notice of such application by publication in accordance with §§ 8-71 and 8-72 of the Code. A copy of the petition, together with a copy of the plat and a copy of the plan, shall be sent by registered mail to the Commissioner who shall forthwith notify the State Water Control Board thereof.

Source: § 62-94.4.

Note: Internal section references have been conformed.

§ 62.1-108. Time and place of hearing on petition; parties.—Upon the filing of any such petition, the court or judge thereof in vacation shall set a time and place for hearing the same, which time and place shall be set forth in the order of publication. Any person affected may appear and be made a party to such proceeding by leave of court.

Source: § 62-94.5.

Note: No change.

§ 62.1-109. Commissioner to examine petition and report to court.—Upon receipt of a copy of any such petition the Commissioner shall examine the same and report thereon to the court upon the following matters:

(1) The average flow of the stream at the point from which water for storage will be taken.

(2) Whether the proposed project conflicts with any other proposed or likely developments on the watershed.

(3) The effect of the proposed impoundment on pollution abatement to be evidenced by a certified statement from the State Water Control Board together with such other relevant comments as such Board desires to make.

(4) Any other relevant matters which he desires to place before the court.

Source: § 62-94.6.

Note: No change.

§ 62.1-110. Court to hear and determine issues; reference to commissioner.—The court, on the day specified in the order of publication, shall hear and determine the issues in the proceeding based on the report and other evidence. In its discretion the court may refer any matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court.

Source: § 62-94.7.

Note: No change.

§ 62.1-111. When leave not granted; terms and conditions; appeals.—If, on the report and other evidence, it appears to the court that by granting such leave other riparian owners will be injured, or there are other justifiable reasons for denying the petition, the leave shall not be granted; provided that in no case shall leave be granted if the certified statement from the State Water Control Board filed under § 62.1-109 shows that, in the opinion of such Board, the reduction of pollution will be impaired or made more difficult. If it be granted, the court shall place the applicant under such terms and conditions as shall seem to it right. An appeal shall lie to the Supreme Court of Appeals.

Source: § 62-94.8.

Note: Internal section reference has been changed.

§ 62.1-112. When leave shall expire.—If the applicant shall not begin his work within two years, and so far finish it within three years after such leave, as then to have his impounding structure in good condition for use; or if such impounding structure be at any time destroyed or rendered unfit for use and the rebuilding or repair thereof shall not within two years from the time of such destruction or unfitness, be commenced, and within five years from that time be so far finished as then to be in good condition for use, the leave so granted shall then expire.

Source: § 62-94.9.

Note: No change.

§ 62.1-113. Use of bed of watercourse.—The Commonwealth hereby gives its consent to the use of the bed of any watercourse to which it has title for the construction of any impounding structure under the provisions of this chapter. No right to construct an impounding structure resting upon the bed of any other watercourse shall lie unless the owner or owners seeking to construct the same has title to the bed of such watercourse.

Source: § 62-94.10.

Note: No change.

§ 62.1-114. Exceptions to application of chapter.—The provisions of this chapter shall not apply to any construction which should be undertaken under chapters 7 (§ 62.1-80 et seq.) or 9 (§ 62.1-116 et seq.) of this title nor shall it apply in any case in which the consent of the federal government or of any agency or instrumentality thereof is required.

Source: § 62-94.11.

Note: Internal chapter references are conformed.

§ 62.1-115. Use of waters stored.—Any owner constructing an impounding structure under the provisions of this chapter shall have the sole and unrestricted use of the flood waters thus stored for the purpose for which the storage was authorized.

Source: § 62-94.12.

Note: No change.

CHAPTER 9.

MILLS, DAMS AND CERTAIN OTHER WORKS ON WATERCOURSES.

§ 62.1-116. Application for leave to build or raise dam across or in watercourse, cut canal, etc.—A person having upon lands owned by him on a watercourse, or proposing to build on such lands, a water mill, or other machine, manufactory, or engine, useful to the public, and desiring leave to erect a dam across, or in such watercourse (whether he own the lands on either side of the watercourse at the point where such dam is to be erected or not), or to cut or enlarge a canal through lands above or below, or to raise a dam which may have been erected under an order of court, or the owner of any such water mill, machine, manufactory, or engine, located on a watercourse, having the right to the use of such watercourse for the operation of his mill, machine, manufactory, or engine, and desiring leave to construct a work on or through

the lands of another for the purpose of confining the watercourse within its customary channel or restoring it thereto where it has been diverted therefrom not more than three years by floods or other natural causes, may apply for such leave to the circuit court of the county wherein such mill, machine, manufactory, or engine stands, or is proposed to be built.

Source: § 62-95.

Note: No change.

§ 62.1-117. Notice required.—Of such application ten days' previous notice shall be given in the manner prescribed in §§ 25-10 and 25-11 to each tenant, or the guardian or committee of the tenant, of the freehold of any lands not owned by the applicant, upon which it is desired to abut a dam, or through which it is desired to cut or enlarge a canal, or construct the work aforesaid.

Source: § 62-96.

Note: No change.

§ 62.1-118. Appointment of commissioners; time of meeting.—On proof of the notice, the court shall, by its order, appoint five disinterested freeholders of such county, as commissioners (any three of whom may act), whose duty it shall be to meet on a certain day to be specified in the order, at the lands on which the mill, machine, manufactory or engine stands, or it proposed to be built, or the work aforesaid is proposed to be constructed, or if they fail to meet on that day, on such subsequent day as they may designate, notice of which shall be given to the parties interested in the manner prescribed by the preceding section; and after they have met, they may adjourn from day to day until their business is completed.

Source: § 62-97.

Note: No change.

§ 62.1-119. Oath of commissioners; duties; report.—The commissioners, before entering upon their duties, shall take an oath faithfully to perform the same, and thereupon shall proceed to inquire and ascertain, if the leave be granted, whether the mansion house of any person, or the outhouses, yard, garden, or orchards thereto belonging, will be overflowed or taken; whether and in what degree ordinary navigation and the passage of fish will be obstructed; whether by any, and if any, by what means such obstruction may be prevented; and whether the health of the neighbors will be annoyed by the stagnation of the waters or otherwise. They shall also circumscribe so much of the lands, not owned by the applicant, as may be necessary for the canal, dam, or work to be constructed as aforesaid, not being (beyond what is in the bed of the watercourse) more than one acre for a dam, nor more than one hundred feet in width for a canal, and shall ascertain what will be a just compensation therefor. Any lands which will probably be overflowed or deprived of water, or otherwise injured by such canal or dam, or be injured by the construction of the work aforesaid, shall likewise be examined by them, and they shall ascertain what will be a just compensation to the several owners thereof, for the damage to the same respectively. All of which matters the commissioners shall set forth in a report, which they shall make out, sign, and return to the court by which they were appointed.

Source: § 62-98.

Note: No change.

§ 62.1-120. When further notice required.—If, by such report, or otherwise, it appear that any person to whom notice has not been given, will sustain damage, notice shall be given to him, in the manner prescribed by § 62.1-117 to show cause why the applicant should not have the leave desired.

Source: § 62-99.

Note: No change.

§ 62.1-121. When new commissioners appointed.—If good cause be shown against the report, or the commissioners report their disagreement, or fail to report within a reasonable time, the court may, in any such case as often as seems to it proper, appoint other commissioners and the matter be proceeded in as before prescribed.

Source: § 62-100.

Note: No change.

§ 62.1-122. When court to refuse or grant leave; when granted, what terms imposed.—If, on the report, or on other evidence, it appears to the court that by granting such leave the mansion house of any person other than the applicant himself, or the outhouses, yard, garden, or orchards thereto belonging, will be overflowed or taken, or that the health of the neighbors will be annoyed, the leave shall not be granted. But if it shall not so appear, the court shall then grant or refuse the leave, as may seem to it proper. If it be granted, the court shall lay the applicant under such terms and conditions as shall seem to it right. It shall, in particular, provide, that ordinary navigation and the passage of fish shall not be obstructed, nor the convenient crossing of the water-course impeded; and where, under such leave, an existing mill, manufactory, machine, or engine is to be supplied with water by a canal, the court shall prescribe a time within which the dam, whereby water had before been supplied, shall be abated, which time shall not be more than one year from the completion of the canal. Whenever such leave is granted, the tenant of any land through which any canal may be cut, may cross it with such fencing, and bridges, and erect such water gates as he may from time to time deem necessary, not obstructing the passage of the water to the mill, manufactory, machine, or engine.

Source: § 62-101.

Note: No change.

§ 62.1-123. Rights of applicant on payment of damages.—The applicant, to whom any such leave is granted, shall, upon paying to the several parties entitled thereto the compensation so ascertained, become seized in fee simple of the land circumscribed by the commissioners, and be authorized to proceed according to such leave.

Source: § 62-102.

Note: No change.

§ 62.1-124. Such leave not to affect vested rights.—No person shall by means of any such leave, draw the water from any mill pond of another, existing at the time of such leave, or do anything in conflict with any vested right in any water works erected on such water course.

Source: § 62-103.

Note: No change.

§ 62.1-125. Time within which applicant must erect or rebuild works; consequence of failure.—If the applicant shall not begin his work within one year, and so far finish it within three years after such leave, as then to have his mill, manufactory, machine, or engine in good condition for use; or if such mill, manufactory, machine, or engine, be at any time destroyed or rendered unfit for use, and the rebuilding or repair thereof shall not within two years from the time of such destruction or unfitness, be commenced, and within five years from that time be so far finished as then to be in good condition for use, the title to the land so circumscribed shall revert to the former owner, his heirs, or assigns, and the leave so granted shall then be in force no longer, except as provided in the following section.

Source: § 62-104.

Note: No change.

§ 62.1-126. Forfeiture by tenant of works damaged or destroyed, and unrestored; right of remainderman or reversioner.—Where any mill, manufactory, machine, or engine in possession of, but not erected by a tenant for life or years, shall be destroyed or become unfit for use, and such tenant shall not, within the two years begin, or within the five years finish such rebuilding or repair, the person next entitled in remainder or reversion may enter and rebuild or repair the same within three years from the time of the failure of such tenant, and thereafter hold and enjoy the same, with its appurtenances, for his use and benefit.

Source: § 62-105.

Note: No change.

§ 62.1-127. Prosecution or action for unforeseen damages.—No proceedings had under this chapter, nor any judgment thereon, shall bar any prosecution or action which could have been maintained if this chapter had not been enacted, unless the prosecution or action be for an injury actually foreseen and estimates in such proceeding or judgment.

Source: § 62-106.

Note: No change.

CHAPTER 10.

VIRGINIA PORTS AUTHORITY.

§ 62.1-128. Division of Ports abolished; Virginia State Ports Authority created.—The Division of Ports of the Department of Conservation and Development is hereby abolished. The Virginia State Ports Authority, hereinafter referred to as Authority, is created as a body corporate and as such shall have, and is hereby vested with, the powers and duties hereinafter conferred in this chapter.

Source: § 62-106.1.

Note: No change.

§ 62.1-129. Board of Commissioners; members and officers; Executive Director; agents and employees.—All powers, rights and duties conferred by this chapter, or other provisions of law, upon the Authority shall be exercised by the Board of Commissioners of the Virginia State Ports Authority, hereinafter referred to as Board or Board of Commissioners. The Board shall consist of seven members to be appointed by the Governor, subject to confirmation by the General Assembly, and who shall

serve at the pleasure of the Governor for terms of six years each, the initial appointments to be two members for terms of six years, two members for terms of five years, two for terms of four years, and one for a term of three years, and subsequent appointments to be made for terms of six years, except appointments to fill vacancies, which shall be made for the unexpired term. They shall receive their expenses and per diem of twenty-five dollars for each day spent on business of the Board. No person shall be eligible to serve more than two successive terms; provided that a person heretofore or hereafter appointed to fill a vacancy may be appointed to serve two additional terms. Incumbency during the current term when this amendment takes effect shall constitute the first of the two successive terms with respect to eligibility for appointment.

The Board shall appoint the chief executive officer of the Authority, who shall not be a member thereof, to be known as the Executive Director and whose compensation from the State shall be fixed by the Board in accordance with law. The Board shall employ or retain such other agents or employees subordinate to the Executive Director as may be necessary. The Board shall elect from its membership the chairman, vice-chairman, secretary, and treasurer, and prescribe their powers and duties.

The Board may also appoint from the staff an assistant secretary and an assistant treasurer, who shall, in addition to other duties, discharge such functions of the secretary and treasurer, respectively, as may be directed by the Board.

Source: § 62-106.2.

Note: The per diem is increased from fifteen to twenty-five dollars.

§ 62.1-130. Powers and duties of Executive Director.—The Executive Director shall exercise such of the powers and duties relating to ports conferred upon the Board as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The Executive Director shall also exercise and perform such other powers and duties as may be lawfully delegated to him, and such powers and duties as may be conferred or imposed upon him by law.

Source: § 62-106.3.

Note: No change.

§ 62.1-131. Office and branch offices.—The Authority shall, in the Hampton Roads Area, have and maintain its principal office, at which all of its records shall be kept, and from which its business shall be transacted. It may, if necessary, establish a branch office or offices within or without this State. The title to all property of every kind belonging to the former Hampton Roads Port Commission or the former State Port Authority of Virginia or the former Division of Ports Department of Conservation and Development, shall be vested in the Commonwealth of Virginia for the Virginia State Ports Authority.

Source: § 62-106.4.

Note: No change.

§ 62.1-132. Boards of municipal port commissioners.—In order to promote the development and the physical and administrative co-ordination and unification of the port facilities within the cities and towns of this State, located upon any of the navigable tidal waters therein, and the proper-co-operation between such cities and towns with respect to such facilities located within the State, the council, or other governing body, of any of such cities or town shall have the power to appoint boards of

municipal port commissioners for such cities and towns, respectively, to which boards, when so appointed may be delegated any or all of the authority of such cities and towns, respectively, with regard to the ownership, operation, management or control of the port terminal facilities within such cities or towns, but those boards of municipal dock commissioners heretofore existing shall continue in effect in accordance with the laws creating them, the only effects of this section on such laws being that the boards shall henceforth be known as boards of municipal port commissioners and that the exercise of their authority shall be in subordination to the authority conferred upon the Board of Commissioners by this chapter, and any conflict between the authority granted to the several port cities and towns or other entity of this State, or the exercise of that authority, and the exercise of the authority granted to such Board of Commissioners under this chapter shall be resolved in favor of the exercise of such authority by the Board of Commissioners.

Source: § 62-106.5.

Note: No change.

§ 62.1-133. Certain rights and duties of Authority.—The Authority shall, subject to the lawful regulation and/or control of the United States government over the navigable waters of this State, have and exercise the following rights and discharge the following duties:

(a) To seek to effect a port co-ordination of the water terminals of the several cities within the ports of this State and their administration, and to promote a spirit of cooperation among these cities in the interest of the ports as a whole.

(b) To initiate and further plans for the development of the ports of this State and to keep informed as to the present and future requirements and needs of the ports of this State.

(c) To encourage and facilitate the creation of boards of municipal port commissioners within the ports of the State, and to cooperate and advise with such cities and towns and aid in the development of the several ports within the State, along progressive and constructive lines.

(d) To seek to secure the improvement of navigable tidal waters within the State, where, in its opinion, such improvements are economically justifiable.

Source: § 62-106.6.

Note: No change.

§ 62.1-134. Additional rights and duties of Board.—Through the Board, the State of Virginia may engage in promoting, developing, constructing, equipping, maintaining, and operating the harbors or seaports within the State, or its jurisdiction, by means of acquiring or constructing, maintaining and operating at such seaports or harbors water craft and terminal facilities necessary or useful in connection therewith. The Authority is charged with the accomplishment of the following general purposes, all or any of them, which are intended to broaden, and not to restrict, any other powers given to it in this chapter, namely:

(a) To develop and improve the harbors or seaports of this State for the handling of water-borne commerce from and to any part of the State of Virginia and other states and foreign countries;

(b) To acquire, construct, equip, maintain, develop and improve such harbors or seaports and their port facilities and to issue revenue bonds for these purposes;

(c) To foster and stimulate the shipment of cargoes and commerce through such ports, whether originating within or without the State of Virginia, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

(d) To compile and disseminate in a single publication, so far as practicable, all port charges, rules and practices in effect at the several ports in this State;

(e) To co-operate with the United States of America, and any agency department, corporation or instrumentality thereof, in the maintenance, development, improvement and use of such harbors and seaports;

(f) To accept funds and property from persons, counties, cities and towns, and to use the same in such manner, within the purposes of the Authority, as shall be stipulated by the grantor, and to act as agent or instrumentality for any of such persons, counties, cities or towns in any matter coming within the general purposes of such Authority; counties, cities and towns are hereby authorized to make grants to the Authority for its purposes and to appoint it as agent;

(g) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(g1) To issue revenue bonds for the acquisition, construction, reconstruction or control of harbors, seaports and their port facilities;

(h) And in general to do and perform any act or function which may tend to or be useful toward the development and improvement of the harbors and seaports of this State, and to the increase of commerce, foreign and domestic, through its harbors and seaports;

(i) But the Authority shall not be authorized or empowered to expend funds appropriated by the General Assembly on, nor to incur any indebtedness on account of, improvement, repair, maintenance, or addition to real or personal property belonging to anyone other than the Authority or the Commonwealth of Virginia, or a political subdivision of the Commonwealth of Virginia, unless the use of such property is guaranteed to the Authority, or the Commonwealth of Virginia by a lease, extending beyond the useful life of the improvement, repair, maintenance or addition or of any new facility erected thereon.

Source: § 62-106.7.

Note: No change.

§ 62.1-135. Further powers.—In order to enable it to carry out the purposes of this chapter, the Authority, but without pledging the faith and credit of the Commonwealth of Virginia:

(a) Is vested with the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(b) Is authorized and empowered to rent, lease, buy, own, acquire and dispose of such property, real or personal, as the Authority deems proper to carry out the purposes and provisions of this chapter, all or any of them and to issue revenue bonds for buying or acquiring such property; and to lease to another such part or all of its property, real or personal, for such period or periods of years, upon such terms and conditions, with or without an option on the part of the lease to purchase any or all of the leased property at such price, at or after the retirement

of all indebtedness incurred by the Authority on account thereof, as the Authority shall determine;

(c) Is authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, ships, piers, quays, elevators, compressors, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof and to issue revenue bonds for these purposes;

(d) May appoint and employ and dismiss, subject to the provisions of chapter 10 of Title 2.1 (§§ 2.1-110 et seq.) of the Code of Virginia, such employees as it may select. The Authority may retain legal counsel, subject to the approval of the Attorney General, to represent the Authority in rate cases and all other hearings, controversies, or matters involving the interests of the Authority and the furtherance of its duties;

(e) Is authorized to establish and maintain a traffic bureau or other office to investigate and seek improvement in rates, rate structure, practices and charges affecting the Virginia ports so as to increase the commerce of such ports;

(f) Is authorized and empowered to apply for and accept grants or loans of money or other property from any federal agency for any and all of the purposes authorized in this chapter, and to expend or use the same in accordance with the directions and requirements attached thereto or imposed thereon by any such federal agency;

(f1) Is authorized and empowered to issue periodicals and to carry and charge for advertising therein;

(f2) Is authorized to establish and maintain branch offices within and without the State and the United States;

(f3) Is authorized, subject to the provisions of chapter 10 of Title 2.1 (§§ 2.1-110 et seq.) of the Code of Virginia, to employ, fix and pay compensation of employees within and without the State and the United States without regard to whether such employees are citizens of the United States;

(f4) Is authorized to issue revenue bonds for the acquisition, construction, reconstruction or control of harbors, seaports and facilities used in connection therewith;

(g) Is vested with power to adopt, alter or repeal its own by-laws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business; and

(h) Is authorized and empowered to do any and all other acts and things in this chapter authorized or required to be done, whether or not included in the general powers in this section mentioned.

Source: § 62-106.8.

Note: Subsections (d) and (f3) are amended by adding the words "subject to the provisions of chapter 10 of Title 2.1 (§§ 2.1-110 et seq.) of the Code of Virginia". See opinions of the Attorney General of Virginia for the year July 1, 1953-June 30, 1954, page 152, dated November 6, 1953.

§ 62.1-136. Power of eminent domain.—The Authority is hereby vested with the power of eminent domain to acquire property or any interest therein, however held, but not property of the State or its agencies, and may exercise the same for the purposes set forth in § 62.1-135. in the manner and to the extent set forth in, and subject to the provisions of, Title 25 of the Code of Virginia; provided that the Authority shall have no power to condemn any property belonging to any other political subdivision of the Commonwealth, or to any common carrier, or public utility or other public service corporation which is being devoted to public use or service. Whether property is being devoted to public use or service in the case of a public service corporation, common carrier, or public utility, shall be decided by the State Corporation Commission in a proceeding under § 25-233; and in the case of a political subdivision shall be decided by the court in which the proceeding is brought.

Source: § 62-106.8:1.

Note: Internal section reference is conformed.

§ 62.1-137. Acquisition, construction, etc., of port facilities, lease of such facilities.—The Authority is further authorized to acquire, construct, equip, develop, improve and finance any port facility, as such term is defined in § 62.1-145, for the purpose of leasing such port facility to, or causing such port facility to be operated and maintained by, counties, cities and towns upon terms and conditions and under contracts of such duration as may be mutually agreeable to the Authority and the respective county, city or town; and counties, cities and towns, notwithstanding any provision to the contrary in this chapter or any other law, are empowered to lease from the Authority, to operate and maintain or cause to be operated and maintained, and to sublease, any port facility, and to enter into such lease and other agreements and agree to pay such rent and provide such funds as they may deem necessary or desirable.

Source: § 62-106.8:2.

Note: Internal section reference is conformed.

§ 62.1-138. Powers of State Corporation Commission not affected.—Nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

Source: § 62-106.9.

Note: No change.

§ 62.1-139. Forms of accounts and records.—The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in such form as the Auditor of Public Accounts prescribes; provided that such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises.

Source: § 62-106.11.

Note: No change.

§ 62.1-140. Definitions; bond resolution; form and requisites of bonds; sale and disposition of proceeds; temporary bonds.—(A) As used in this section and in §§ 62.1-141 through 62.1-146, the words “port facility” shall mean harbors, seaports and all facilities used in connection therewith and shall include all those facilities named in §§ 62.1-134 (b), 62.1-135 (b) and 62.1-135 (c).

The word "cost" as used in this chapter shall embrace the cost of construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Authority for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for one year after completion of construction, engineering and legal expenses, cost of plans, specifications, surveys and estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any port facility, administrative expense, the creation of a working capital fund for placing the port facility in operation, and such other expense as may be necessary or incident to the construction of such port facility, the financing of such construction and the placing of the same in operation.

(B) The Authority is hereby authorized to provide by resolution for the issuance, at one time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of any Authority project for the acquisition, construction, reconstruction or control of port facilities or of any portion or portions thereof. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six per centum per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the Executive Director of the Authority or shall bear his facsimile signature, and the official seal of the Authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the secretary of the Authority, and any coupons attached thereto shall bear the facsimile signature of the Executive Director of the Authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Negotiable Instruments Law of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine will best effect the purposes of this chapter.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of acquisition, construction, reconstruction and control of port facilities or the portion thereof for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement herein-

after mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds, or, if such bonds shall have been issued for paying the cost of a portion of the project, such surplus may be applied to the payment of the cost of any remaining portion of the project.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

Source: § 62-106.12.

Note: Internal section references are conformed.

§ 62.1-141. Trust agreement securing bonds; provisions of agreement or bond resolution; depository of proceeds or revenues; expenses.— In the discretion of the Authority any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage the port facilities or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the port facilities or the portion thereof in connection with which such bonds shall have been authorized, the rates to be charged, the custody, safeguarding and application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such

trust agreement or resolution may be treated as a part of the cost of the operation of the port facilities or portion thereof.

Source: § 62-106.13.

Note: No change.

§ 62.1-142. Charges for use of port facilities; sinking fund created from revenues for payment of bonds.—The Authority is hereby authorized to fix and revise charges for the use of the port facilities under its control and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, and to fix the terms, conditions, rents and rates of charges for such use. Such charges shall be so fixed and adjusted in respect of the aggregate of charges from the port facility or the portion or portions thereof in connection with which bonds shall have been issued under the provisions of this chapter as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such port facility or portion or portions and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or of any municipality, county or other political subdivision of the Commonwealth. The charges and all other revenues derived from the port facility or portion or portions in connection with which such bonds shall have been issued except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. In addition to all other powers granted to the Authority by this chapter, the Authority is hereby authorized to pledge to the payment of the principal of and the interest on any bonds under the provisions of this chapter any monies received or to be received by it under any appropriation made to it by the General Assembly, unless the appropriation is restricted by the General Assembly to specific purposes of the Authority or such pledge is prohibited by the law making such appropriations; provided, however, that nothing herein shall be construed to obligate the General Assembly to make any such appropriation.

Source: § 62-106.14.

Note: No change.

§ 62.1-143. Proceeds of bonds and revenues held in trust for certain purposes.—All moneys received pursuant to the provisions of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The Authority shall, in the resolution authorizing the bonds or in the trust agreement securing such bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received to a trustee, which shall be any trust company or bank having the powers of a trust company within or without the Commonwealth, who shall act as trustee of the funds, and hold and apply the same to the purposes of this chapter, subject to such regulations as this chapter and such resolution or trust agreement may provide. The trustee may invest and re-invest such funds pending their need for the construction of the project in securities that are legal investments under the laws of the Commonwealth for funds held by fiduciaries.

Source: § 62-106.15.

Note: No change.

§ 62.1-144. Remedies of bondholders and trustee.—Any holder of bonds, notes, certificates or other evidences of borrowing issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this chapter or under such trust agreement or the resolution authorizing the issuance of such bonds, notes or certificates and may enforce and compel the performance of all duties required by this chapter or by such agreement or resolution to be performed by the Authority or by any officer or agent thereof, including the fixing of charges and collection of the same.

Source: § 62-106.16.

Note: No change.

§ 62.1-145. Exercise of powers constitutes governmental functions; exemption from taxation.—The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitant of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity, and as the operation and maintenance of the project by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Authority under the provisions of this chapter or upon the income therefrom; and the bonds, notes, certificates or other evidences of debt issued under the provisions of this chapter, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county or other political subdivision thereof.

Source: § 62-106.17.

Note: No change.

§ 62.1-146. Bonds as legal investments.—Bonds issued by the Authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, bank-

ing associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

Source: § 62-106.18.

Note: No change.

§ 62.1-147. Bonds not debt or pledge of credit of Commonwealth or political subdivision.—Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or of any such political subdivision, but shall be payable solely from the funds provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the port facility and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this chapter.

Source: § 62-106.19.

Note: No change.

CHAPTER 11.

FEDERAL WATER RESOURCES DEVELOPMENT PROJECTS.

§ 62.1-148. Resolutions and ordinances assuring local cooperation.—The governing body of any county, city or town is authorized to adopt such resolutions and/or ordinances as may be required giving its assurances to the Secretary of the Army or the Chief of Engineers of the United States Army for the fulfillment of the required items of local cooperation as expressed in Acts of Congress and/or congressional documents, as conditions precedent to the accomplishment of river and harbor and flood control projects of the United States, when it shall appear, and is determined, by such local governing body that any such project will accrue to the general or special benefit of such county, city or town. In each case where the subject of such local cooperation requirements comes before a governing body a copy of its final action, whether it be favorable or unfavorable, will be sent to the Commissioner of Water Resources for the information of the Governor.

Source: § 62-117.1.

Note: No change.

§ 62.1-149. Items of co-operation to which localities may bind themselves.—Such resolutions and ordinances may irrevocably bind such county, city or town:

(1) To provide, free of cost to the United States the fee simple title to lands, perpetual and/or temporary easements, rights-of-way and any

other interest in lands for cut-off bends, the laying of pipe lines, erection of dikes, sluiceways, spillways, dams, drains, deposit of dredged materials, and for other purposes;

(2) To alter existing structures on such areas;

(3) To simultaneously dredge designated areas not covered by the federal project when and where required;

(4) To construct and maintain public wharves and public roads leading thereto;

(5) To make contributions in money or property in lieu of providing disposal areas for dredged materials;

(6) To hold the United States safe and harmless against claims for damages arising out of the project or work incident thereto;

(7) To remove sewer pipes and submarine cables;

(8) To construct and maintain marine railways for the public use; and

(9) To provide or satisfy any other items or conditions of local co-operation as stipulated in the congressional document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local co-operation, the accomplishment of which counties, cities and towns are herein authorized to irrevocably bind themselves; it being intended to authorize counties, cities and towns to comply fully and completely with all of the items of local co-operation as contemplated by Congress and as stipulated in the congressional acts or documents concerned.

Source: § 62-117.2.

Note: No change.

§ 62.1-150. Acquisition of lands.—For the purpose of complying with the terms of local co-operation as specified in this chapter and as stipulated in the congressional document covering the particular project involved, any city or town may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation, whether such lands are within or without the corporate limits of such city or town, and any county may acquire such lands by lease, purchase, gift or condemnation.

Provided, however, that the provisions of § 25-233, as now or hereafter in effect, shall apply to any property belonging to any corporation possessing the power of eminent domain which may be sought to be taken by condemnation hereunder.

Source: § 62-117.3.

Note: No change.

§ 62.1-151. Ratification of former resolutions and ordinances.—All resolutions and ordinances adopted prior to March sixteenth, nineteen hundred forty-eight, by cities, counties and towns in furtherance of local co-operation projects of the United States for river and harbor improvement and for flood control and their acts in pursuance thereof are hereby ratified and affirmed as if accomplished under the authority of this chapter.

Source: § 62-117.4.

Note: No change.

§ 62.1-152. Liberal construction.—This chapter shall be liberally construed as in aid of projects of the United States for the improvements of rivers and harbors and for flood control and in furtherance of and not in limitation of powers now conferred by law on counties, cities and towns.

Source: § 62-117.5.

Note: No change.

CHAPTER 12.

VIRGINIA BEACH EROSION COMMISSION.

§ 62.1-153. Creation of Commission; members, officers and agents; quorum.—A Commission is hereby created for the city of Virginia Beach to be known as the Virginia Beach Erosion Commission which is to be composed of five members to be appointed by the Governor. All the said members of the Commission shall be citizens of the city of Virginia Beach. Two members of the said Commission shall be appointed for a term of two years and three members of the said Commission shall be appointed for a term of four years. Upon the expiration of the term of the members appointed for two years, their successors shall be appointed for a term of four years. The said Commission shall be a body corporate invested with the rights, powers and authority and charged with the duties set forth in this chapter. The Commission may elect one of its members as chairman and may appoint such officers and agents as it may require. A majority of the members of the Commission shall constitute a quorum.

Source: § 62-117.6.

Note: No change.

§ 62.1-154. Powers, functions and duties.—The Virginia Beach Erosion Commission hereby created shall have all the powers necessary and convenient to carry out the purposes for which it is created, including the following powers in addition to others herein granted:

(a) To sue and be sued; to have a seal and to alter same at pleasure; to have perpetual succession; to make and execute instruments necessary and convenient to the exercise of the powers of the Commission; and to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with law to carry out the general purposes of the Commission.

(b) The general purpose of the Commission hereby created is to stop, impede or correct erosion along the Atlantic coast in the city of Virginia Beach, and to this end, the said Commission shall have power to erect, construct and maintain jetties, groins, sea walls, to pump or otherwise place sand or any kind of material upon the Beach for the purpose of correcting or controlling erosion; to acquire land, rights of way, sand, or any kind of material to attain or carry out the objects of the Commission; to improve, beautify, maintain and preserve the ocean front in the city of Virginia Beach; and to provide for the construction, reconstruction, improvement, alteration, repair, or replacement of any jetty, groin, sea wall, sand or other material.

(c) To contact with any person, firm or corporation for the performance of such act or acts necessary to carry out the purposes for which the Commission is created.

(d) The council of the city may appropriate such funds to the said Commission as it deems necessary to carry out the purposes for which this Commission is created.

(e) The Commission may accept and expend to carry out the purposes of this chapter any gift, grant or donation from any public or private source.

Source: § 62-117.7.

Note: No change.

CHAPTER 13.

IMPROVEMENT OF NAVIGABILITY OF STREAMS.

§ 62.1-155. Cooperation by cities on navigable streams with United States.—The cities in the Commonwealth situated on navigable streams shall have the power to cooperate with the United States of America in the improvement of the navigability of such streams involving the deepening, widening and straightening the channel thereof and making provision for turning basins at terminals and mooring areas thereon.

Source: § 62-117.8.

Note: No change.

§ 62.1-156. Power of cities to give assurances to United States.—In order to execute the purposes and objectives declared in § 62.1-155, the cities therein defined shall have the power to give assurances to the United States of America that they will:

1. Furnish or cause to be furnished free of cost to the United States, when and as required by its duly authorized representatives, lands, easements and rights of way and spoil or dredged material disposal areas, unrestricted in disposal elevations, for the shore disposal of material to be initially dredged and for future maintenance of such improvements within and without such cities;

2. Furnish or cause to be furnished, when and as so required, permits or easements for ingress to and egress from highways to such shore disposal areas, and permits or easements to construct pipeline trestles across oyster and clamming grounds and to lay dredge pipelines across lands adjacent to such shore disposal areas within and without such cities;

3. Subject to all applicable laws, secure such releases or permits, either or both, as may be required, holding and saving the United States, its contractors and assigns free from any and all claims for damages to public or privately owned oyster and clamming grounds resulting or attributable to the accomplishment of the initial dredging or subsequent maintenance of such improvements, either or both;

4. Secure such releases or permits, either or both, as may be so required, holding and saving the United States, its contractors and assigns free from any and all claims (a) for damages resulting from any change in the natural course of such rivers, (b) for damages resulting from blasting operations in the removal of rock or changes in ground water levels, and (c) for costs resulting from provision and operation of any bridges or ferries that may be necessary for furnishing connection between the mainland and any islands created by channel cutoffs;

5. Relocate or cause to be relocated, at no cost to the United States, when necessary, roads, bridges, waterfront structures, sewerage, water

supply, storm drainage, electric power, and other utility facilities within and without such cities, except those which the United States has theretofore permitted to be constructed in, under or over such rivers;

6. Construct, maintain, expand and operate such terminal facilities within such cities which may be required to accommodate prospective foreign and domestic commerce expected to develop from the improvement of the channel of such rivers, the extent of such facilities to be mutually agreed to by the council of such cities and the duly authorized representatives of the United States; and

7. Contribute funds to the United States necessary to construct, extend and maintain mooring or berthing areas immediately adjacent to river terminals of such cities when necessary because of expansion of such terminal facilities.

Source: § 62-117.9.

Note: Internal section reference has been conformed.

§ 62.1-157. Power of cities to bind themselves to perform or execute assurances.—The cities defined in § 62.1-155 shall have the power to irrevocably bind themselves to do any and all things necessary to perform or execute the assurances authorized to be given pursuant to § 62.1-156 anything in the charters of such cities to the contrary notwithstanding.

Source: § 62-117.10.

Note: Internal section references have been conformed.

§ 62.1-158. Claims for damages to oyster and clamming grounds.—Claims for damages to oyster and clamming grounds may be asserted in the courts having jurisdiction in the county or city in which such damages occur.

Source: § 62-117.11.

Note: No change.

CHAPTER 14.

FOREIGN TRADE ZONES.

§ 62.1-159. "Public corporation" defined.—The term "public corporation", for the purposes of this chapter, means the State of Virginia or any political subdivision thereof or any incorporated municipality therein or any public agency of this State or of any political subdivision thereof or of any municipality therein, or any corporate municipal instrumentality of this State or of this State and one or more other states.

Source: § 62-118.

Note: No change.

§ 62.1-160. Application by public corporation to establish and operate zone.—Any public corporation of the State, as that term is defined in the preceding section, is authorized to make application for the privilege of establishing, operating and maintaining a foreign-trade zone in accordance with an act of Congress approved June eighteen, nineteen hundred and thirty-four, entitled "An act to provide for the establishment, operation, and maintenance of foreign-trade zones on ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", published in volume forty-eight of United States statutes at large, chapter five hundred and ninety.

Source: § 62-119.

Note: No change.

§ 62.1-161. Application by private corporation.—Any private corporation hereafter organized under the laws of this State for the purpose of establishing, operating and maintaining a foreign-trade zone in accordance with the act of Congress referred to in § 62.1-160 is likewise authorized to make application for the privilege of establishing, operating and maintaining a foreign-trade zone in accordance with the act of Congress.

Source: § 62-120.

Note: Internal section reference has been conformed.

§ 62.1-162. Authority to establish and operate zone; conditions and restrictions of act of Congress, etc.—Any public or private corporation authorized by this chapter to make application for the privilege of establishing, operating and maintaining such foreign-trade zone, whose application is granted pursuant to the terms of such act of Congress is authorized to establish a foreign-trade zone and to operate and maintain it, subject to the conditions and restrictions of the act of Congress, and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by the act of Congress to carry out the provisions of the act.

Source: § 62-121.

Note: No change.

CHAPTER 15.

PORT MANAGEMENT GENERALLY.

§ 62.1-163. Port management.—The governing body of any city having a port may, at its pleasure, create such agencies, appoint such agents and employ such persons as may be required for the orderly and effective management of such port and its harbor; but nothing herein shall be construed to repeal or amend any prior act of the General Assembly creating or authorizing the creation of any port authority, port and industrial authority, port commission or port and industrial commission or the provisions of any municipal charter. The Circuit Court of the county of Northumberland shall appoint such an agent for the port of Reedville. The appointing authority may prescribe for such agents and agencies such terms of office, titles, authority, duties, fees and compensation not inconsistent with law as it may deem appropriate, and may require from each person so appointed a fidelity bond in favor of the Commonwealth. All controversies arising between or among agents, agencies, authorities or commissions of two or more ports shall be referred to the Virginia State Ports Authority, which authority shall, under such rules and regulations not inconsistent with law as it shall promulgate, resolve every such controversy in the best interests of the Commonwealth as a whole; but any party thereto shall have a right of appeal to the Supreme Court of Appeals in the same manner and under the same rules as appeals are taken from orders of the State Corporation Commission.

Source: §§ 62-122 through 62-138.

Note: This section replaces the entire Chapter 9 (§ 62-122 et seq.) relating to “harbor masters, dock masters and port wardens”, which is largely obsolete. The best example of this obsolescence is found in § 62-127, relating to the duties of harbor masters generally, which reads in part as follows: “He shall not permit any square-rigged vessel to ride at single anchor longer than one tide, and shall require the master of a vessel, as soon as may be, after coming to anchor or hauling into any wharf, if he deem it necessary (not exceeding twenty-four

hours) to rig in his jib-booms and all fore and aft spars, and to top or brace up sharp his lower and topsail yards, so that the passage of other vessels and steam-boats or ferryboats shall not be obstructed." Warwick County, referred to in § 62-125, no longer exists, having been incorporated as the city of Warwick, which subsequently merged with the city of Newport News. The Peninsula Ports Authority now serves both Newport News and Hampton. Norfolk County, referred to in § 62-130, and the former city of South Norfolk are now the city of Chesapeake. The Richmond and Alleghany Railroad Company, referred to in §§ 62-134 and 62-135, no longer exists; its successor being the Chesapeake and Ohio Railroad Company, which no longer has any particular interest in the provisions mentioned. Reedville appears never to have had a harbor master appointed under the provisions of § 62-124; however, because of the nature and magnitude of commercial fishing interests there, the Commonwealth's Attorney of Northumberland County desires the retention of the basic authority of § 62-124 for use if and when needed. The powers of the city of Richmond found in §§ 62-122 and 62-138 are brought up to date and considerably broadened by the proposed revision. Powers granted by city charters would remain undisturbed, as would those of existing commissions and authorities. The Alexandria Port Commission was authorized by Chapter 392 Acts of 1962. The Chesapeake Port and Industrial Commission for the city of Chesapeake was created pursuant to § 2.01 of the city's charter. The Norfolk Port and Industrial Authority was created for the city of Norfolk by Chapter 463 Acts of 1948. The Peninsula Ports Authority of Virginia was created for the cities of Newport News and Hampton by Chapter 46 Acts of 1952, as amended by Chapter 42 Acts special session 1956 and by Chapter 39 Acts of 1964. The Portsmouth Port and Industrial Commission was created by Chapter 157 Acts of 1955, amended by Chapter 29 Acts 1964 and by Chapter 468 Acts of 1966. The Virginia State Ports Authority was created by Chapter 61 Acts 1952, amended by Chapter 667 Acts 1954, Chapter 207 Acts 1956, Chapters 173, 174 and 488 Acts 1958, Chapter 100 Acts 1960 and Chapter 346 Acts 1962. The need for and purpose of § 62.1-163 should be self evident; nevertheless, only occasional use of this provision is expected, and then by request of the parties. Particular attention is invited to the fact that many of the functions to be revised or deleted have been assumed and are performed by the United States Coast Guard.

CHAPTER 16.

WHARVES, DOCKS, PIERS AND BULKHEADS.

§ 62.1-164. Erection and abatement of wharves, piers and bulkheads.—Any person owning land upon a watercourse may erect a wharf on the same, or pier or bulkhead, in such watercourse opposite his land; provided, navigation be not obstructed, nor the private rights of any person be otherwise injured thereby. The circuit court of the county in which such wharf, pier or bulkhead is, after causing ten days' notice to be given to the owner thereof, of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead obstructs the navigation of the watercourse, or so encroaches on any public landing as to prevent the free use thereof, may abate the same.

Source: § 62-139.

Note: No change. Although §§ 62-139 and 62-140 of this short chapter are unchanged, § 62-141 is deleted as obsolete, the State Corporation Commission being otherwise fully empowered to act in appropriate cases.

§ 62.1-165. Erection of wharves at county landings.—Any person desiring the privilege of erecting a wharf at or on any county landing may, after giving notice of his intention by advertising such notice at some public place near the landing, and also at the front door of the courthouse

of such county, on the first day of a term of the circuit court of the county, present to the court at its next term a petition for such privilege. The court may determine the same, and may, in its discretion, grant such privilege and fix such rates and charges upon such conditions and limitations as to it may seem fit. The court, at any subsequent term, may, if it think proper, revoke such privilege, or alter such conditions or limitations, or regulate the rates and charges. This section shall not be construed to authorize a circuit court of the county to grant the privilege of erecting a wharf within a city.

Source: § 62-140.

Note: No change.

SPECIAL NOTE: §§ 62-141 through 62-174 are deleted as obsolete. §§ 62-142 through 62-147 relate to steam whistles on the James River, landing sick seamen and passengers, burial of dead from vessels and run-away seamen. These provisions are no longer needed because of expanded federal control of traffic, safety and activities generally upon the navigable waters of the state together with more adequate recent state legislation relating to port management, small craft safety and public health. §§ 62-158 through 62-174 relate to commissioners of wrecks. It is of historical interest that these provisions have remained, without change, as laws of this State since 1792, a time when sailing vessels frequently were unable to withstand the perils of the sea and the public was more prone to pilfer property from the vessel. The original purpose of these provisions appears to have been the designation of a State official who could be placed in charge of a wreck and its cargo to the end that it might be preserved for the ultimate benefit of the owner. For additional history of this article, attention is invited to *Wiggins v. 1100 Tons, More or Less, of Italian Marble* 186 F. Supp. 452. The records of the Secretary of the Commonwealth show that the last appointment under this section was that of F. Macon Tamage for Princess Anne County and the city of Virginia Beach on August 22, 1956. Earlier the same year, on August 10, 1956, William M. Snyder was appointed for the same county and city. The last persons earlier appointed under this section were for Princess Anne County in 1922. No other appointment may be found in the records of the Secretary of the Commonwealth during the past fifty years. Attention is invited to the fact that this act has applied only to counties. By act of the General Assembly in 1962, the areas comprising the county of Princess Anne and the city of Virginia Beach were combined to form the city of Virginia Beach effective January 1, 1963. In practice the purposes of §§ 62-158 through 62-174 today are fulfilled by the U. S. Coast Guard and Navy.

CHAPTER 17.

MOTORBOATS AND WATER SAFETY.

§ 62.1-166. Declaration of policy.—It is the policy of this State to promote safety for persons and property in and connected with the use, operation, and equipment of vessels, and to promote uniformity to laws relating thereto.

Source: § 62-174.1.

Note: No change.

§ 62.1-167. Definitions.—As used in this chapter, unless the context clearly requires a different meaning:

(1) "*Vessel*" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) “*Motorboat*” means any vessel propelled by machinery whether or not such machinery is the principal course of propulsion.

(3) “*Owner*” means a person, other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) “*Waters of this State*” means any public waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State.

(5) “*Person*” means an individual, partnership, firm, corporation, association, or other entity.

(6) “*Operate*” means to navigate or otherwise use a motorboat or a vessel.

(7) “*Commission*” means the Commission of Game and Inland Fisheries.

Source: § 62-174.2.

Note: No change.

§ 62.1-168. Commission of Game and Inland Fisheries to administer chapter; Motorboat Committee; funds for administration.—(a) It shall be the duty of the Commission of Game and Inland Fisheries to enforce and administer the provisions of this chapter.

(b) The chairman of the Commission shall designate from among the members of the Commission three members who shall serve as the Motorboat Committee of the Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this chapter.

(c) All expenses required for administration and enforcement of this chapter shall be paid from the funds collected pursuant to the numbering provisions of this chapter, provided, however, that the Commission is hereby authorized, subject to the approval of the Governor, to use funds from the cash balance of the game protection fund in an amount not to exceed one hundred thousand dollars, to be used for initiating the provisions of this chapter and to be refunded as soon as practicable, but within a period not to exceed four years, from the funds collected pursuant to the numbering provisions of this chapter. All moneys collected pursuant to the numbering provisions of this chapter shall be deposited into the State treasury and credited to a special fund known as the Game Protection Fund, and accounted for as a separate part thereof. Such moneys shall be made available to the Commission for the administration and enforcement of this chapter as herein provided, and for educational activities relating to boating safety and for other activities and purposes of direct benefit to the boating public and for no other purpose. All moneys collected pursuant to the numbering provisions of this chapter and moneys otherwise provided for in this chapter shall be made available to carry out the intent and purposes as set forth herein in accordance with plans approved by the Commission and all such funds are hereby appropriated, reserved, set aside and made available until expended for the enforcement, administration and other provisions of this chapter, provided that the Commission is hereby authorized to adopt a plan or formula for the

use of said moneys for employing and equipping such additional personnel as may be necessary for carrying out the provisions of this chapter and for paying a proportionate share of the salaries, expense, and operational costs of existing personnel according to the time and effort expended by them in carrying out the provisions of this chapter. Such plan or formula may be altered or amended from time to time by the Commission as existing conditions may warrant. No funds derived from the sale of hunting licenses or fishing licenses shall be expended or diverted for carrying out the provisions of this chapter.

Source: § 62-174.3.

Note: No change.

§ 62.1-169. Identification numbers required.—Every motorboat on the waters of this State shall be numbered except those specifically exempt in § 62.1-173. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat.

Source: § 62-174.4.

Note: Internal section reference is conformed.

§ 62.1-170. Application for numbers; fee; renewal of certificate; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; dealers' and manufacturers' certificates and numbers.—(a) The owner of each motorboat requiring numbering by this State shall file an application for number with the Commission on forms approved by it. The application shall be signed by the owner, or his agent, of the motorboat and shall be accompanied by a fee of five dollars. Upon receipt of the application in approved form the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. Any certificate issued after December thirty-first, nineteen hundred sixty-three in accordance with this chapter shall be issued to expire three years from the first day of the month in which issued, and may thereafter upon proper application and payment of fee, in the discretion of the Commission, be renewed. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket-size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

The Commission is authorized and empowered to cancel and recall any certificate of number issued by the Commission when it appears proper payment has not been made for such certificate of number or when any such certificate has been improperly or erroneously issued.

(b) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall

record the number prior to operating the motorboat on the waters of this State in excess of the ninety-day reciprocity period provided for in § 62.1-173 (1). Such recordation shall be in the manner and pursuant to the procedure required for the award of a number under subsection (a) of this section, except that no additional or substitute number shall be issued.

(c) Should the ownership of a numbered motorboat change, a new application form with appropriate fee as provided in subsection (a) of this section shall be filed with the Commission and a new certificate bearing the same number shall be awarded in the manner as provided for in an original award of number. In case a certificate should become lost a new certificate bearing the same number shall be issued upon payment of a fee of fifty cents. Possession of the certificate shall in cases involving prosecution for violation of any provision of this chapter be prima facie evidence that the person whose name appears thereon is the owner of the boat referred to therein.

(d) In the event that an agency of the United States government shall have in force an over-all system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this chapter by the Commission shall be in conformity therewith.

(e) The Commission may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award, in conformity with this chapter and with any rules and regulations of the Commission, shall be valid as if awarded directly by the Commission.

(f) All records of the Commission made or kept pursuant to this section shall be public records but shall be open for inspection subject to such conditions as the Commission may prescribe. The Commission shall furnish, without cost, the annual lists of boat registrations, as of January one of each year to the commissioners of revenue, of each county or city, except that the Commission shall not send such lists to any commissioner who requests that he not receive such lists.

(g) Every certificate of number awarded pursuant to this chapter shall continue in full force and effect for the period that it is valid unless sooner terminated or discontinued in accordance with the provisions of this chapter.

(i) The owner shall furnish the Commission notice of the transfer of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this State pursuant to subsections (a) and (b) of this section or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction, or abandonment shall terminate the certificate of number for such motorboat except that, in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate of number.

(j) Any holder of a certificate of number shall notify the Commission within fifteen days if his address no longer conforms to the address appearing on the certificate, and shall, as a part of such notification, furnish the Commission his new address.

The Commission may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(k) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this chapter shall be painted, attached, or otherwise displayed on either side of the bow of such motorboat.

(l) Dealers and manufacturers.

(1) The registering numbering requirements of this chapter shall apply to dealers and manufacturers of motorboats.

(2) Applications for certificates of number shall be made on the approved application form prescribed in this chapter. Dealers and manufacturers shall certify that they are dealers or manufacturers, as the case may be.

(3) Applications shall be accompanied by a fee of fifteen dollars for dealers and twenty-five dollars for manufacturers, by check or money order, and shall be forwarded to the Commission.

(4) Upon receipt by the Commission of a properly completed application and fee, it shall issue to the applicant a dealer's or manufacturer's certificate of number as appropriate, which may be used in connection with the operation of any motorboat in the possession of such dealer or manufacturer, when the boat is being used for demonstration purposes.

(5) Additional dealer's or manufacturer's certificates of number may be obtained by making application in the same manner as prescribed for the initial certificate with payment of an additional fee of eight dollars for each additional certificate.

(6) Manufacturers or dealers may have the number or numbers awarded to them printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated, so long as the display meets the requirements of this chapter.

Source: § 62-174.5.

Note: Internal section reference is conformed.

§ 62.1-171. Authorization for and placing of markers in waters of the State used for public swimming areas.—(a) Any individual owning real estate which touches any of the waters of this State or the agent of such individual may petition the Commission to authorize the placing of markers approved by the Commission around a public swimming or bathing area.

(b) The Commission, upon receiving such petition and sufficient proof and such other information as the Commission requires that the water adjacent to such real estate is used in whole or in part as a public swimming or bathing area, may authorize the placement of such markers as are necessary to designate the area as a swimming or bathing area.

(c) The cost of the purchase and placement of such markers shall be borne by the individual requesting the placement of such markers.

Source: § 62-174.5:1.

Note: No change.

§ 62.1-172. Classification and required lights and equipment; rules and regulations.—(a) Motorboats subject to the provisions of this chapter shall be divided into four classes as follows:

(1) Class A. Less than sixteen feet in length.

(2) Class 1. Sixteen feet or over and less than twenty-six feet in length.

(3) Class 2. Twenty-six feet or over and less than forty feet in length.

(4) Class 3. Forty feet or over.

(b) Every motorboat in all weathers from sunset to sunrise shall carry and exhibit the following lights when under way, and during such times no other lights which may be mistaken for those prescribed shall be exhibited:

(1) Motorboats of Class A and Class 1 shall carry a white light aft to show all around the horizon and shall carry a combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw light from the right ahead to two points abaft the beam on their respective sides.

Every motorboat of Classes 2 and 3 shall carry the following lights:

a. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

b. A bright white light aft to show all around the horizon and higher than the white light forward.

c. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

(3) Motorboats of Classes A and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft prescribed by this section. Motorboats of Classes 2 and 3 when so propelled, shall carry the colored side lights, suitably screened, but not the white lights prescribed by this section. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert a collision.

(4) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subsection, when applied to lights, shall mean "visible" on a dark night with clear atmosphere.

(5) When propelled by sail and machinery any motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

(c) Any vessel may carry and exhibit, in lieu of lights required by subsection (b) of this section, such lights as may be specifically authorized

or required by statute or by rules and regulations promulgated by the Commission.

(d) Every motorboat of Classes 1, 2 or 3 shall be provided with an efficient whistle or other sound-producing mechanical appliance.

(e) Every motorboat of Classes 2 or 3 shall be provided with an efficient bell.

(f) Every motorboat shall carry at least one life preserver or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Commission for each person on board, so placed as to be readily accessible; provided, that every motorboat carrying passengers for hire shall carry so placed as to be readily accessible at least one life preserver of the sort prescribed by the regulations of the Commission for each person on board.

(g) Every motorboat shall be provided with such number, size and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Commission, which fire extinguisher shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

(h) The provisions of subsections (d), (e), and (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to § 62.1-181 or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Commission.

(j) Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the Commission for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

(k) The Commission is hereby authorized to make rules and regulations modifying the requirements contained in this chapter to the extent necessary to keep these requirements generally in conformity with the provisions of the federal navigation laws, or, with the rules promulgated by the United States Coast Guard.

(l) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(m) Row boats, whether under oars or sail, when occupied and in use in all weathers from sunset to sunrise, when used on any body of salt water or any river below the fall line of such river, and on any river above the fall line of such river, pond, lake or body of impounded water, where the use of power propelled boats is regular and customary, shall have ready at hand a lantern or flashlight showing a white light which shall be temporarily exhibited in sufficient time to prevent collision.

Source: § 62-174.6.

Note: In subsection (c) the words "Any vessel may carry and exhibit, in lieu of lights required by subsection (b) of this section, such lights as may be specifically authorized or required by statute or by rules and regulations promulgated

by the Commission." have been substituted for the former wording "Any vessel may carry and exhibit the lights required by the Federal Regulations for Preventing Collisions at Sea, 1948, Federal Act of October 11, 1951 (33 USC 143 147d) as amended, in lieu of the lights required by subsection (b) of this section." In subsection (k), third line, after the word "requirements" the word "generally" is added. Subsection (m) is deleted, and subsection (n) is redesignated (m).

§ 62.1-173. Exemption from numbering requirements.—A motorboat shall not be required to be numbered under this chapter if it is:

(1) A motorboat which has been awarded a number pursuant to federal law or a federally approved numbering system of another state: Provided, that any such boat shall not have been within this State for a period in excess of ninety consecutive days.

(2) A motorboat from a country other than the United States temporarily using the waters of this State.

(3) A motorboat which is used in a governmental function by the United States, a state or a subdivision thereof.

(4) A ship's lifeboat.

(5) A vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto.

(6) A racing boat used during an authorized race and during a twenty-four hour period before and after such race.

(7) A motorboat having a total propulsion force as determined by the manufacturer's maximum horsepower rating of less than ten horsepower whether or not such total propulsion force is in use.

Source: § 62-174.7.

Note: No change.

§ 62.1-174. Boat liveries.—It shall be unlawful for the owner of a boat livery to rent a motorboat to any person unless the provisions of this chapter have been complied with. It shall be the duty of owners of boat liveries to equip all motorboats rented as required by this chapter.

Source: § 62-174.8.

Note: No change.

§ 62.1-175. Muffling devices.—The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in § 62.1-181, and for such motorboats while on trial runs, during a period not to exceed forty-eight hours immediately preceding such regatta or race and for such motorboats while competing in official trials, for speed records during a period not to exceed forty-eight hours immediately following such regatta or race.

Source: § 62-174.9.

Note: Internal section reference is conformed.

§ 62.1-176. Operating boat or manipulating water skis, etc., in reckless manner or while intoxicated, etc.—(a) No person shall operate any motorboat or vessel, or manipulate any skis, surfboard, or similar device

in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

Any person who shall violate any provision of this section shall be guilty of a misdemeanor and may be punished as provided by § 18.1-9.

Source: § 62-174.10.

Note: No change.

§ 62.1-177. Duty of operator involved in collision, accident or other casualty; reports inadmissible as evidence.—(a) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to render persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(b) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of one hundred dollars, shall, within ten days, file with the Commission a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. Such report shall not be admissible as evidence.

(c) Any officer investigating any collision, accident or other casualty shall have authority, in lieu of arresting any person charged with violating any of the provisions of this chapter, to issue a written summons to such person (stating name, address, boat number, offense charged, etc.) to appear in court as in § 46.1-178.

Source: § 62-174.11.

Note: No change.

§ 62.1-178. Furnishing information to agency of United States.—In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the Commission pursuant to § 62.1-177 (b) shall be transmitted to said official or agency of the United States.

Source: § 62-174.12.

Note: Internal section reference is conformed.

§ 62.1-179. Water skis, surfboards, etc.—(a) No person shall operate a vessel on any waters of this State for towing a person or persons on water skis, or a surfboard, or similar device unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person or persons being towed or unless the skier or skiers wear life preservers.

(b) No person shall operate a vessel on any water of this State towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in water skiing or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(c) The provisions of subsections (a) and (b) of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under § 62.1-181.

(d) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon to collide with any object or person.

Source: § 62-174.13.

Note: Internal section reference is conformed.

§ 62.1-180. Motorboats and skis prohibited in waters of the State marked for public swimming areas.—No person shall operate a motorboat or manipulate skis within the area of the waters of this State marked by the Commission as provided in § 62.1-171 of the Code of Virginia.

Source: § 62-174.13:2.

Note: Internal section reference is conformed.

§ 62.1-181. Regattas, races, marine parades, tournaments or exhibitions.—(a) The Commission may authorize the holding of regattas, motorboat, or other boat races, marine parades, tournaments, or exhibitions on any waters of this State. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat, or other boat race, marine parade, tournament, or exhibition is proposed to be held, the person in charge thereof, shall, at least thirty days prior thereto, file an application with the Commission for permission to hold such regatta, motorboat, or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat, or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without authorization of the Commission in writing.

(b) The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a State permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

Source: § 62-174.14.

Note: No change.

§ 62.1-182. Local regulation.—(a) Any political subdivision of this State, may at any time, but only after public notice, make formal application to the Commission for special rules and regulations with reference to the safe and reasonable operation of vessels on any water within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(b) The Commission is hereby authorized upon application by a political subdivision or its own motion to make special or general rules and regulations with reference to the safe and reasonable operation of vessels on any waters within the territorial limits of any political subdivision of this State; without limiting the generality of the grant of such power, a system of regulatory or navigation markers may be adopted by the Commission. Provided that nothing in this section shall be construed to affect the application of any general law concerning the tidal waters of this State.

(c) Any county, city or town of this State, may at any time, but only after approval by the Commission, enact ordinances regulating the operation of vessels on any waters within its territorial limits, and the conduct and activity of any person using such waters, and may provide for the enforcement thereof and penalties for the violation thereof, provided said penalties do not exceed the penalties provided in this chapter for similar offenses.

Source: § 62-174.15.

Note: No change.

§ 62.1-183. Regulations to conform with chapter 8, article 1, of Title 29; publication.—All regulations shall conform to chapter 8, article 1 (§ 29-125 et seq.), Title 29 of the Code of Virginia and all rules and regulations shall be published by the Commission in a convenient form.

Source: § 62-174.16.

Note: No change.

§ 62.1-184. Enforcement of chapter; vessels displaying coast guard inspection decal.—Every game warden and every other law enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this chapter and in the exercise thereof shall have authority to stop any vessel subject to this chapter; and, after having identified himself in his official capacity, shall have authority to board and inspect any vessel subject to this chapter; provided that, except for enforcement of § 62.1-176, and the requirement of having the registration certificate on board, the provisions of this section shall not apply to any vessel of twenty-six feet or more in length on which is displayed a current valid United States Coast Guard or United States Coast Guard Auxiliary inspection decal.

Source: § 62-174.17.

Note: The proviso following the last semi-colon in § 62-174.17 has been amended to read: "provided that, except for enforcement of § 62.1-176, and the requirement of having the registrations certificate on board, the provisions of this section shall not apply to any vessel of twenty-six feet or more in length on which is displayed a current valid United States Coast Guard or United States Coast Guard Auxiliary inspection decal."

§ 62.1-185. Penalties.—Any person who violates any provision of §§ 62.1-169, 62.1-170, 62.1-172, 62.1-174, 62.1-175, 62.1-177, 62.1-179, 62.1-180, 62.1-181, and 62.1-184 or regulation adopted under this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars for each such violation.

Source: § 62-174.18.

Note: Internal section references have been conformed.

§ 62.1-186. Operation of watercraft by manufacturers, dealers, etc.—Notwithstanding any other provisions of this chapter, the Commission may promulgate such rules and regulations regarding the operation of watercraft by manufacturers, distributors, dealers, and demonstrators as the Commission may deem necessary and proper.

Source: § 62-174.19.

Note: No change.

CHAPTER 18.

PROTECTION OF AIDS TO NAVIGATION.

§ 62.1-187. Punishment of offenses relating to buoys, beacons or day marks.—Any person or persons who shall moor any vessel or vessels of any kind or name whatsoever or any raft or any part of a raft to any buoy, beacon, or day mark, placed in the waters of Virginia by authority of the United States or shall in any manner hang on with any vessel or raft or any part of a raft to any such buoy, beacon, or day mark, or shall wilfully remove, damage or destroy any such buoy, beacon or day mark, or shall cut down, remove, damage or destroy any beacon or beacons erected on land in this State by the authority of the United States or through unavoidable accident run down, drag from its position, or in any way injure any buoy, beacon, or day mark as aforesaid and shall fail to give notice as soon as practicable of having done so to the harbor master or other legal manager of the port or to the United States Coast Guard within the district in which such buoy, beacon or day mark may be located, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars or by imprisonment not to exceed three months or both; one-third of the fine in each case shall be paid to the informer and two-thirds thereof to the light-house board to be used in repairing the buoys and beacons.

Any person having charge of any raft passing any buoy, beacon or day mark who shall not exercise due diligence in keeping clear of it, or if unavoidably fouling it shall not exercise due diligence in clearing it without dragging from it such buoy, beacon or day mark shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not to exceed fifty dollars.

Source: § 62-175.

Note: The references to "Light House Board" and "collector of the port" are deleted.

§ 62.1-188. Lien for cost of repairing or replacing buoy, beacon or day mark.—The cost of repairing or replacing any such buoy, beacon, or day mark which may have been misplaced, damaged, or destroyed by any vessel or raft whatsoever having been made fast to any such buoy, beacon, or day mark shall, when the same shall be legally ascertained, be a lien upon such vessel or raft and may be recovered against such vessel or raft and the owner or owners thereof in an action of debt in any court of competent jurisdiction in this state.

Source: § 62-176.

Note: No change.

§ 62.1-189. Anchoring on range of range lights.—It shall be unlawful for any vessel to anchor on the range of any range lights established by the United States unless such anchorage is unavoidable, and the master of any vessel so anchoring shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed fifty dollars, one half of the fine in each case to be paid to the informer and one half to the State.

Source: § 62-177.

Note: The words "Light House Board" are deleted.

CHAPTER 19.

DREDGING, SAND AND GRAVEL.

§ 62.1-190. **Dredging of sand or gravel prohibited.**—It shall be unlawful for any person or corporation to dredge, dig or otherwise remove and carry away any part of any deposit of sand or gravel, or mixture of sand and gravel from any part of the fast land, or beach or bluff, abutting upon any of the rivers, streams or other waters within the jurisdiction of the Commonwealth, or from any part of the bed of such rivers, streams or other waters between high and low water marks.

In case any such deposit extends uninterruptedly from low water mark out into the bed of such waters, it shall, except as hereinafter provided, be unlawful to dig and carry away any part of such extended deposit lying between such low water mark and the middle line of such waters.

Source: § 62-178.

Note: No change.

§ 62.1-191. **Violation a misdemeanor.**—Any person or corporation violating the provisions of this chapter shall be guilty of a misdemeanor.

Source: § 62-179.

Note: The language “and upon conviction, shall be subject to a fine of not exceeding Three Hundred Dollars, or imprisonment not exceeding six months, or both, in the discretion of the Court” are deleted.

§ 62.1-192. **Injunction and damages.**—Any owner of any such fast land or beach, bluff, or bed of stream, between high and low water mark on which any such deposit exists or from which it extends towards the middle line of the water, as aforesaid, may, by appropriate proceedings brought by such owner, have an injunction against any person or corporation removing and carrying away or attempting to remove and carry away any such deposit or extension thereof without authority of the state; and may, in such proceeding, or by separate action, recover against such violation of this act damages in treble the value of the material removed.

Source: § 62-180.

Note: “An injunction” is substituted for “a perpetual injunction” and the words “without authority of the state” are added.

§ 62.1-193. **Exemptions from chapter.**—The prohibitions of this chapter shall not apply to any owner of any fast land, bluff, beach or bed of stream, upon or in front of which such deposits may lie, nor to any person or corporation acting under written permission from, or contract with such owner, nor to any person or corporation acting under the authority of the United States, necessarily removing such deposit in the lawful improvement or regulation of navigation of any waters subject to the authority of the United States.

None of the provisions of this chapter shall be deemed to interfere in any manner with the provisions of any law of this state relating to taking fish and oysters.

Source: § 62-181.

Note: “The provisions of this chapter shall not apply to Princess Anne County nor to Pulaski County or New River therein” is deleted.

CHAPTER 20.

MISCELLANEOUS OFFENSES.

§ 62.1-194. Obstructing or contaminating certain waters.—Except as otherwise permitted by law, it shall be unlawful for any person willfully or negligently to cause to be in or upon any watercourse or tidal waters in this state any object or substance which might reasonably be expected to, and does, endanger, obstruct, impede or substantially impair the lawful use or enjoyment of such waters and their environs by others. Every such act or omission shall be a misdemeanor, and every day during which such an act or omission continues shall constitute a separate offense.

Source: §§ 62-182 through 62-191.

Note: This is a new section to replace the piecemeal provisions of §§ 62-182 through 62-191 and to provide a more adequate provision of general application. The proposed section has been reconciled with the statutory provisions relating to the Water Control Board, Department of Health, Commission of Fisheries, Commission of Game and Inland Fisheries, the various port authorities and commissions, Division of Water Resources, Highway Department, Corporation Commission and the common law relating to riparian rights and uses generally of state waters. In effect, the proposed section merely applies the criminal sanctions provided by § 18.1-9 to existing civil law.

§ 62.1-195. Discharge of oil in certain waters.—(1) The following words, as used in this section, shall have the following meanings, unless the context otherwise requires:

- (a) "Oil" means any petroleum product or derivative.
- (b) "Person" means any individual, association, firm or corporation.
- (c) "Waters" means navigable tidal waters.
- (d) "Vessel" means any boat, ship, barge, or other floating conveyance, however powered.

(2) Except in case of emergency imperiling life or property, or unavoidable accident, collision or stranding, and except as otherwise permitted by any lawful regulation, it shall be unlawful for any person to discharge, or suffer, or permit the discharge from any vessel of oil by any method, means or manner into, upon or under the navigable tidal waters of the state. Pursuant to such regulations which may be prescribed under federal laws or regulations, any lawful body of the state having jurisdiction of the ports of this state is authorized and empowered to regulate the discharge of oil from vessels in such quantities, under such conditions and at such times and places as in its opinion will not be deleterious to health or seafood, or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters, and for the loading, handling and unloading of oil. Such body may cooperate with any agency of the federal government in the enforcement of this section.

(3) Any person who violates paragraph (2) or any regulation prescribed in pursuance thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars and not less than five hundred dollars, or by imprisonment not exceeding one year and not less than thirty days, or by both such fine and imprisonment, for each offense. And any vessel (other than one owned and operated by the State of Virginia or the United States) from which oil is discharged in violation of paragraph (2) or any regulation prescribed in pursuance thereof, shall be liable for the pecuniary penalty specified in this section and the penalty shall constitute a lien on such vessel.

The provisions of this section shall be deemed to supplement and not to replace the provisions of § 62.1-194.

Source: § 62-194.

Note: The last sentence is added.

§ 62.1-196. Persons renting boats other than motorboats on public waters to provide life preservers.—It shall be unlawful for any person to regularly offer a boat or boats, other than a motorboat, for rent for use on the public waters of this state unless such person shall provide, for the use of each passenger in each such boat, a life preserver of the sort prescribed by the regulations of the Commission of Game and Inland Fisheries. Any person violating this section shall be guilty of a misdemeanor and punished accordingly.

Source: § 62-195.

Note: The words “waters of any natural or artificial lake in” have been replaced with the words “public waters of”. In § 62-195 the words “having an area in excess of one hundred acres” have been deleted. The words “a vest-type life preserver adequate to support such passenger in water for a period of at least twenty-four hours” has been replaced with the words “a life preserver of the sort prescribed by the regulations of the Commission of Game and Inland Fisheries.”

3. That § 28.1-116 of the Code of Virginia be amended and re-enacted as follows:

§ 28.1-116. If any creek, cove or inlet within the jurisdiction of this Commonwealth *which* makes into or runs through the lands of any person, is less than one hundred yards in width at mean low water and is comprised within the limits of his lawful survey *as defined in § 62.1-2*, which survey has been of record in the official records of the county or city for at least twenty years, such person or other lawful occupant shall have the exclusive right to use such creek, cove or inlet for sowing or planting oysters or other shellfish.

4. That § 33-69 of the Code of Virginia be amended and re-enacted as follows:

§ 33-69. *Subject to the provisions of Chapter 1 of Title 62.1 (§ 62.1-1 et seq.),* the State Highway Commissioner may take for use on the public roads in this State sand, gravel, rock and any other materials deemed by him suitable for road purposes from the streams, rivers and water-courses, title to the bed of which is in the Commonwealth, and in addition to the power of eminent domain already vested in him may acquire by condemnation all property, rights and easements necessary to enable him to obtain and make use of such materials. All such proceedings shall be governed by the provisions of law governing the exercise by the State Highway Commissioner of the power of eminent domain for State highway purposes.

5. All acts and parts of acts inconsistent with the provisions of this act are repealed to the extent of such inconsistency.

6. The repeal of Title 62 effective as of October one, nineteen hundred sixty-eight, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 62 of the Code of Virginia nor the enactment of Title 62.1 shall apply to offenses committed prior to October one, nineteen hundred sixty-eight,

and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this act, an offense was committed prior to October one, nineteen hundred sixty-eight, if any of the essential elements of the offense occurred prior thereto.

7. Whenever in Title 62.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 62, as such title existed prior to October one, nineteen hundred sixty-eight, are transferred in the same or in modified form to a new section, article or chapter of Title 62.1, and whenever any such former section, article or chapter of Title 62 is given a new number in Title 62.1, all references to any such former section, article or chapter of Title 62 appearing elsewhere in the Code of Virginia than in Title 62.1 shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

8. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

9. This act shall become effective on October one, nineteen hundred sixty-eight.