

ENVIRONMENTAL MANAGEMENT

SUPPLEMENT TO THE

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA



House Document No. 9A

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1973

MEMBERS OF COUNCIL

LEWIS A. McMURRAN, JR., *Chairman*
WILLARD J. MOODY, *Vice-Chairman*
RUSSELL M. CARNEAL
JOSEPH V. GARTLAN, JR.
ARTHUR R. GIESEN, JR.
EDWARD E. LANE
STANLEY A. OWENS
WILLIAM V. RAWLINGS
D. FRENCH SLAUGHTER, JR.
W. ROY SMITH
JAMES M. THOMSON
LAWRENCE DOUGLAS WILDER
EDWARD E. WILLEY

STAFF

JOHN A. BANKS, JR.

ROBERT W. BENDALL	PHILLIP S. LAMAR
CLARANCE M. CONNER, JR.	ESSON M. MILLER, JR.
ROBERT B. COUSINS, JR.	L. WILLIS ROBERTSON
COURTNEY R. FRAZIER	LAURENS SARTORIS
WILDMAN S. KINCHELOE, JR.	G. WILLIAM WHITE, JR.

PURPOSE.

The purpose of this supplement is to update the information contained in the Virginia Advisory Legislative Council's Report on Environmental Management in Virginia which reported to the Governor and the 1973 General Assembly of Virginia.

THE ACT.

The Environmental Coordination Act of 1973 (House Bill 1586) passed with amendments. A copy, as enacted, is attached as Appendix A. It is important to note that "this act shall be in force on and after July one, nineteen hundred seventy-four, and shall expire at midnight on July one, nineteen hundred seventy-four, unless it shall be reenacted by the General Assembly prior to that date."

RESOLUTIONS.

As a result of this Report and the enactment of the environmental agency reorganization legislation, the 1973 General Assembly passed a resolution (House Joint Resolution No. 265) directing the Virginia Advisory Legislative Council to continue its study of the consolidation of environmental agencies and other aspects of environmental problems.

Also passed were House Joint Resolution Nos. 99 and 236 which directed the Virginia Advisory Legislative Council's Committee on Environmental Management to specifically study matters relating to water pollution and vehicular noise pollution, respectively.

These resolutions are set forth below:

HOUSE JOINT RESOLUTION NO. 265

Directing the Virginia Advisory Legislative Council to continue its study of the consolidation of environmental agencies and other aspects of environmental problems.

The Virginia Advisory Legislative Council is directed to continue its study of environmental problems, such study to be concerned with all aspects of governmental management of environmental problems, and to make a report to the Governor and General Assembly by the first day of December, nineteen hundred seventy-three.

The Council may employ on a full or part time basis, and fix the compensation, of such consultants and administrative personnel as may be required to assist it in the performance of this study.

The Council shall have the fullest cooperation of every agency of the State dealing directly or indirectly with environmental problems, and shall have free access to the records and other documents of such agencies as well as those of other State study groups or task forces.

The Council has proposed a general reorganization of State agencies involved with the protection of all aspects of the environment in Virginia, and during the further course of its inquiries the Council shall undertake a study of the wide range of deficiencies, both specific and general, which continue to impair the effectiveness of governmental management of environmental problems in Virginia.

The Council shall continue to study environmental problems now regulated by the State government and those which may be expected to be regulated in whole or in part at the State level. Such study shall concern itself with the formulation of further specific management proposals and shall include proposals relating to land use controls, power plant siting and noise

pollution. Forthcoming proposals related to land use control measures shall be examined from the standpoint of the merits of various structural alternatives available. Additionally, the Council shall study other areas of environmental interest, such as citizens' suits and environmental impact statements.

SENATE JOINT RESOLUTION NO. 99

Directing the Committee on Environmental Management of the Virginia Advisory Legislative Council to study matters relating to water pollution.

Whereas, Virginia has made commendable progress in the reduction of water pollution, thereby providing benefits to health and our environment; and

Whereas, the program of federal grants to advance the construction of works to reduce or eliminate pollution has suffered a severe blow in the withholding of funds and the failure to appropriate funds by the federal authorities; and

Whereas, many areas of the State face critical problems as a result of the reduction in federal funds for pollution control; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, that the Committee on Environmental Management of the Virginia Advisory Legislative Council is hereby directed to gather information and carefully consider what has previously been accomplished in the construction of facilities to control water pollution for the present and future, how the counties, cities and towns which require such additional facilities may provide the same, and other relevant matters. The Committee shall especially consider the effect of the grant-in-aid programs on the construction of such facilities and how a locality which has constructed a treatment plant when grants were not available might be reimbursed subsequently when grants for such construction are available. The Committee shall give special attention to the developments of methods and procedures whereby localities that are in a critical situation concerning the need for pollution control facilities might be aided by the State when federal funds are not available for such purpose. In determining what areas constitute critical areas, the Committee shall consider those which have been faced with the need to withhold building permits, prohibit sewer connections, and halt or slow the development of subdivisions.

All agencies of the State shall assist the Committee in its work.

The Committee shall conclude its study and make its report to the Virginia Advisory Legislative Council, which shall make its report to the Governor and the General Assembly not later than December one, nineteen hundred seventy-three and may make interim reports at such times as it determines conditions exist which require prompt action.

HOUSE JOINT RESOLUTION NO. 236

Directing the Committee on Environmental Management of the Virginia Advisory Legislative Council to make a study and report on vehicular noise pollution.

Whereas, noise pollution is becoming an ever more serious problem, especially in urban areas, and motor vehicles are recognized as a major part of this problem; and

Whereas, the Congress of the United States has just enacted the Noise Control Act of 1972; P.L. 92-574, which leaves certain areas of regulation to the several states; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the

Committee on Environmental Management of the Virginia Advisory Legislative Council is hereby directed to make a study of vehicular noise pollution, with a view toward proposing legislation, consistent with the Federal Noise Control Act of 1972, to set and enforce limits on environmental noise through licensing, regulation, or restrictions on the sale or use of motor vehicles. The Committee shall study all aspects of the problem, including but not limited to means of setting noise limits for motor vehicles, providing for establishment of test procedures and instrumentation to be utilized, and all other matters of inspection, licensing and enforcement which it deems appropriate. All agencies of the State and its political subdivisions and agencies thereof shall assist the Committee upon request.

The Committee shall complete its study and make its report to the Council which shall in turn make its report to the Governor and the General Assembly not later than September one, nineteen hundred seventy-three.

SUMMARY.

A brief summary of the objectives and effects of the Environmental Coordination Act of 1973; Chapter 471, Acts of 1973 (H. B. 1586):

1. This Act is an effort to coordinate environmental and natural resources problems, improve permit processing, expedite appeal procedures, and eliminate duplication. The bill, as amended, establishes a Department of Conservation, Development and Natural Resources comprised of five citizen's boards, five operating divisions, and a Commissioner. There are no substantive changes in existing law; all current programs, controls, and regulatory functions in the environmental and natural resources areas are retained. The procedural changes made are essential to the promotion of the coordinated approach envisioned by the Act.
2. It provides for the continued recognition of five citizen's boards — Water Resources, Air Pollution and Solid Wastes, Natural Resources, Game and Inland Fisheries and Marine Resources — comprised initially of present members who continue to be appointed by the Governor for staggered terms. In addition, the Commissioner of Health would be named to the Water Resources and Air Pollution and Solid Wastes Boards as a member. The functions of the Boards will be to focus primarily upon the development of policies, goals, and budgets, establishment of standards and regulations, and review of actions — or inactions — related to the administration and enforcement of those policies, standards, and regulations.
3. The Act also provides for the conversion of existing agency staffs into five operating divisions (divided along the same lines as the boards), each of which would be headed by a Director appointed by the respective Boards. Each division, under the coordinating supervision of the Commissioner, would be charged with the duty of administering and enforcing the policies, standards, and regulations adopted by the respective boards.
4. The Act provides that the head of the Department, the Commissioner, be appointed by the Governor; he shall provide advice and assistance to the citizen's boards for purposes of coordination and take the necessary administrative steps to reduce duplication of effort at the operating division level.

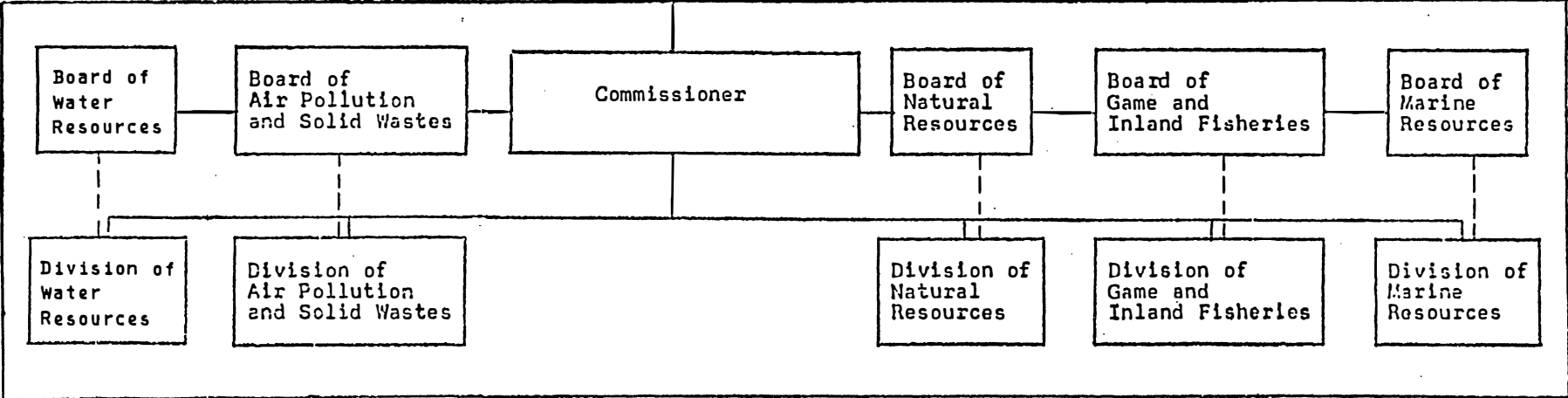
ORGANIZATIONAL CHART.

As a result of the Environmental Reorganization Act of 1973, the organizational structure of the agencies of the Commonwealth which will be involved with environmental problems is shown by the following chart:

Governor

Secretary of
Commerce and
Resources

Department of Conservation, Development and Natural Resources



APPENDIX A
(The Environmental Coordination Act of 1973)

CHAPTER 471

An Act to amend and reenact §§ 2.1-51.9, 2.1-121, 3.1-217.2, 10-20 through 10-21.3:1, 10-21.5, 10-22 through 10-33, 10-34.1 through 10-41, 10-46, 10-46.1, 10-50 through 10-52, 10-54 through 10-55, 10-57.1, 10-68 through 10-74, 10-85, 10-86.1 through 10-88, 10-90.1 through 10-90.3, 10-90.6, 10-90.7, 10-90.9, 10-90.21, 10-90.22, 10-90.26, 10-90.27, 10-91 through 10-98, 10-100, 10-101, 10-103, 10-105, 10-106, 10-108, 10-109, 10-127, 28.1-37, 28.1-39, 28.1-41 through 28.1-43, 28.1-45 through 28.1-46.3, 28.1-48, 28.1-60 through 28.1-63, 28.1-69, 28.1-70, 28.1-73, 28.1-74, 28.1-79, 28.1-85 through 28.1-87, 28.1-90 through 28.1-101, 28.1-103, 28.1-104, 28.1-107, 28.1-109 through 28.1-116, 28.1-118.1, 28.1-119.1 through 28.1-121, 28.1-124, 28.1-128, 28.1-132, 28.1-134, 28.1-135, 28.1-137, 28.1-138, 28.1-142, 28.1-145 through 28.1-147, 28.1-149, 28.1-161 through 28.1-163, 28.1-165, 28.1-166, 28.1-168, 28.1-173.2, 28.1-175 through 28.1-177, 28.1-179, 28.1-180, 28.1-183, 28.1-185, 28.1-188, 28.1-195 through 28.1-197, 29-24, 29-27, 29-28, 29-31, 29-32, 29-35.1, 29-35.2, 29-37 through 29-47, 29-50, 29-52, 29-55, 29-55.4, 29-57.1 through 29-58, 29-61, 29-64, 29-65, 29-67 through 29-70, 29-73 through 29-75, 29-77, 29-80, 29-89, 29-92, 29-98 through 29-100, 29-104, 29-110, 29-111, 29-112.1, 29-114 through 29-115, 29-117, 29-119, 29-120, 29-125 through 29-128.1, 29-129.1 through 29-130.1, 29-132, 29-135 through 29-137, 29-143, 29-144, 29-145.1 through 29-146, 29-148, 29-150, 29-151, 29-153.2, 29-154, 29-155.3, 29-158 through 29-158.2, 29-162, 29-171 through 29-173, 29-177, 29-179, 29-181, 29-184.5, 29-189, 29-192, 29-199, 29-204, 29-205, 29-207 through 29-212, 29-213.1, 29-232 through 29-236, 45.1-180 through 45.1-188, 45.1-191 through 45.1-193, 45.1-196 through 45.1-211, 45.1-213 through 45.1-215, 45.1-217 through 45.1-220, 58-730.3, 62.1-3 through 62.1-5, 62.1-13.2, 62.1-13.4, 62.1-13.5, 62.1-13.7 through 62.1-13.9, 62.1-13.11 through 62.1-13.19, 62.1-167, 62.1-168, 62.1-170 through 62.1-173, 62.1-177, 62.1-178, 62.1-181, 62.1-182, and 62.1-186, as severally amended, of the Code of Virginia; and to further amend the Code of Virginia by adding in Title 10 chapters numbered 1.3 through 1.7 containing sections numbered 10-17.31 through 10-17.65, 10-17.66 through 10-17.84, 10-17.85 through 10-17.99, 10-17.100 through 10-17.104, and 10-17.105 through 10-17.106, respectively; and by adding in Title 28.1 sections numbered 28.1-36.1 through 28.1-36.12; and by adding in Title 29 sections numbered 29-23.2 through 29-23.10; and by adding in Title 45.1 sections numbered 45.1-180.1 and 45.1-197.1; and by adding in Title 62.1 sections numbered 62.1-13.2:1, 62.1-13.4:1, 62.1-13.5:1, and 62.1-44.45 through 62.1-44.82; and to repeal sections numbered 10-115 through 10-117.1, 10-17.9:1 through 10-17.30, 10-1 through 10-17, 10-177 through 10-186, 28.1-1 through 28.1-36, 29-1 through 29-23.1, 32-9.1, 45.1-212 and 62.1-44.2 through 62.1-44.44, as severally amended, of the Code of Virginia; the amended, added and repealed sections relating to and providing for environmental management in State government and to revise and reallocate functions of certain State agencies involved in this field.

[H 1586]

Approved March 20, 1973

Be it enacted by the General Assembly of Virginia :

1. That §§ 2.1-51.9, 2.1-121, 3.1-217.2, 10-20 through 10-21.3:1, 10-21.5, 10-22 through 10-33, 10-34.1 through 10-41, 10-46, 10-46.1, 10-50 through 10-52,

10-54 through 10-55, 10-57.1, 10-68 through 10-74, 10-85, 10-86.1 through 10-88, 10-90.1 through 10-90.3, 10-90.6, 10-90.7, 10-90.9, 10-90.21, 10-90.22, 10-90.26, 10-90.27, 10-91 through 10-98, 10-100, 10-101, 10-103, 10-105, 10-106, 10-108, 10-109, 10-127, 28.1-37, 28.1-39, 28.1-41 through 28.1-43, 28.1-45 through 28.1-46.3, 28.1-48, 28.1-60 through 28.1-63, 28.1-69, 28.1-70, 28.1-73, 28.1-74, 28.1-79, 28.1-85 through 28.1-87, 28.1-90 through 28.1-101, 28.1-103, 28.1-104, 28.1-107, 28.1-109 through 28.1-116, 28.1-118.1, 28.1-119.1 through 28.1-121, 28.1-124, 28.1-128, 28.1-132, 28.1-134, 28.1-135, 28.1-137, 28.1-138, 28.1-142, 28.1-145 through 28.1-147, 28.1-149, 28.1-161 through 28.1-163, 28.1-165, 28.1-166, 28.1-168, 28.1-173.2, 28.1-175 through 28.1-177, 28.1-179, 28.1-180, 28.1-183, 28.1-185, 28.1-188, 28.1-195 through 28.1-197, 29-24, 29-27, 29-28, 29-31, 29-32, 29-35.1, 29-35.2, 29-37 through 29-47, 29-50, 29-52, 29-55, 29-55.4, 29-57.1 through 29-58, 29-61, 29-64, 29-65, 29-67 through 29-70, 29-73 through 29-75, 29-77, 29-80, 29-89, 29-92, 29-98 through 29-100, 29-104, 29-110, 29-111, 29-112.1, 29-114 through 29-115, 29-117, 29-119, 29-120, 29-125 through 29-128.1, 29-129.1 through 29-130.1, 29-132, 29-135 through 29-137, 29-143, 29-144, 29-145.1 through 29-146, 29-148, 29-150, 29-151, 29-153.2, 29-154, 29-155.3, 29-158 through 29-158.2, 29-162, 29-171 through 29-173, 29-177, 29-179, 29-181, 29-184.5, 29-189, 29-192, 29-199, 29-204, 29-205, 29-207 through 29-212, 29-213.1, 29-232 through 29-236, 45.1-180 through 45.1-188, 45.1-191 through 45.1-193, 45.1-196 through 45.1-211, 45.1-213 through 45.1-215, 45.1-217 through 45.1-220, 58-730.3, 62.1-3 through 62.1-5, 62.1-13.2, 62.1-13.4, 62.1-13.5, 62.1-13.7 through 62.1-13.9, 62.1-13.11 through 62.1-13.19, 62.1-167, 62.1-168, 62.1-170 through 62.1-173, 62.1-177, 62.1-178, 62.1-181, 62.1-182, and 62.1-186, as severally amended, of the Code of Virginia, be amended and reenacted and that the Code of Virginia be further amended by adding in Title 10 chapters numbered 1.3 through 1.7 containing sections numbered 10-17.31 through 10-17.65, 10-17.66 through 10-17.84, 10-17.85 through 10-17.99, 10-17.100 through 10-17.104, and 10-17.105 through 10-17.106, respectively; and by adding in Title 28.1 sections numbered 28.1-36.1 through 28.1-36.12; and by adding in Title 29 sections numbered 29-23.2 through 29-23.10; and by adding in Title 45.1 sections numbered 45.1-180.1 and 45.1-197.1; and by adding in Title 62.1 sections numbered 62.1-13.2:1, 62.1-13.4:1, 62.1-13.5:1, and 62.1-44.45 through 62.1-44.82 as follows:

§ 2.1-51.9. Agencies for which responsible.—Each secretary shall be responsible to the Governor for the following agencies:

(a) Administration—Division of the Budget, Division of Personnel, Division of Engineering and Buildings, Division of Automated Data Processing, Division of Justice and Crime Prevention, Division of State Planning and Community Affairs and Art Commission. Any reference in this Code to the Commissioner of Administration shall hereafter be deemed a reference to the Secretary of Administration.

(b) Finance—Department of Taxation, Department of the Treasury, Department of Accounts, Compensation Board, Department of Property Records and Insurance, Virginia Supplemental Retirement System, Department of Purchases and Supply and Virginia Alcoholic Beverage Control Board.

(c) Education—State Department of Education, State Council of Higher Education, Education Assistance Authority, Virginia Commission on Higher Education Facilities, Advisory Council on Educational Television, Department of Community Colleges, State-supported institutions of higher education, Virginia State Library and Virginia College Building Authority

(d) Human Affairs—Department of Mental Hygiene and Hospitals, Department of Health, Department of Welfare and Institutions, Probation and Parole Board, Department of Vocational Rehabilitation, Commission

for the Visually Handicapped, Commission for Children and Youth, and schools for the deaf and blind.

(e) Commerce and Resources—Department of Conservation, ~~and Economic Development and Natural Resources~~, Department of Labor and Industry, Department of Professional and Occupational Registration, Milk Commission, Virginia Truck and Ornamentals Research Station, Department of Agriculture and Commerce, Commission on the Industry of Agriculture, Virginia Soil and Water Conservation Commission, ~~Marine Resources Commission~~, Virginia Institute of Marine Science, ~~Water Control Board~~, ~~Air Pollution Control Board~~, ~~Commission of Game and Inland Fisheries~~, Virginia Historic Landmarks Commission, Virginia Museum of Fine Arts, Gunston Hall, Jamestown Foundation, Commission on Outdoor Recreation, Commission on Arts and Humanities, Virginia Independence Bicentennial Commission, Virginia World War II Memorial Commission, and Virginia Employment Commission.

(f) Transportation and Public Safety—Department of Highways, Virginia Port Authority, Virginia Airports Authority, Division of Motor Vehicles, Department of State Police, Highway Safety Division, office of civil defense, and Department of Military Affairs.

The Governor may, by executive order, assign any State executive agency not enumerated in this section, or reassign any such agency whether or not enumerated in this section, to a particular secretary for the purposes of this chapter.

§ 2.1-121. Legal service in civil matters.—All legal service in civil matters for the Commonwealth, the Governor, the State Corporation Commission and every State department, institution, division, commission, board, bureau or official, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as hereinafter provided in this chapter. No regular counsel shall be employed for or by the Governor, ~~the State Corporation Commission~~ or any State department, institution, division, commission, board, bureau or official. The Attorney General in his discretion may represent personally or through one of his assistants any member, agent or employee of the Alcoholic Beverage Control Board; agent, inspector or investigator appointed by the State Corporation Commission; person employed by the State Highway Commission; persons employed by the Commissioner of Motor Vehicles; any guard or other authorized person acting as custodian of any prisoner under the supervision of the Director of the Department of Welfare and Institutions; police officer appointed by the Superintendent of State Police; or any game warden appointed by the ~~Commission of Game and Inland Fisheries~~ *Commissioner of the Department of Conservation, Development and Natural Resources*; who shall be made defendant in any civil action for damages arising out of any matter connected with his official duties. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General.

The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the ~~board, commission, division or~~ department whose members, officers, inspectors, investigators, or other employees are defended pursuant to this section.

§ 3.1-217.2. Complaints to Commissioner.—Any person may register a complaint with the Commissioner and the Commissioner shall seek the advice of the Department of Health, the ~~Commission of Game and Inland Fisheries~~ *Commissioner or the appropriate Director or Directors or Board or Boards of such Division of the Department of Conservation, Development and Natural Resources*, the Virginia Institute of Marine

Science, the State Water Control Board, and Virginia Polytechnic Institute prior to referring such complaint to the Board.

CHAPTER 1.3

ARTICLE 1

§ 10-17.31. *The short title of this chapter is "Environmental Coordination Act of 1973."*

§ 10-17.32. *In furtherance of Article XI of the Constitution of Virginia and in recognition of the vital needs of citizens of the Commonwealth to live in a healthful and pleasant environment and the necessity of using the natural resources of the Commonwealth to improve the quality of her citizen's lives, it is hereby declared to be the policy of the Commonwealth to promote the wise use of its air, water, land, wildlife and other natural resources so that they shall be preserved for the use and pleasure of future generations.*

To that end, it shall be the continuing policy of the government of the Commonwealth to coordinate the initiation, implementation and improvement of its environmental and natural resource plans, programs and functions so that the Commonwealth's general responsibility as trustee of the environment for future generations may be wisely and efficiently discharged and so that the process of reviewing and acting upon requests for licenses, permits or certificates involving environmental effects of natural resource use may be improved and expedited to the maximum extent feasible.

§ 10-17.33. *The following words, for the purposes of this chapter, shall have the following meanings:*

(a) *"Department" means the Department of Conservation, Development and Natural Resources.*

(b) *"Commissioner" means the Commissioner of Conservation, Development and Natural Resources.*

"Division" means a division of the Department.

(d) *"Bureau" means a bureau within a Division.*

(e) *"Board" means a Board established in § 10-190 of this chapter.*

(f) *"Director" means a director of a Division.*

ARTICLE II

§ 10-17.34. *There is hereby established a Department of Conservation, Development and Natural Resources. There are hereby established within the Department five Divisions: the Division of Air Pollution and Solid Wastes, the Division of Water Resources, the Division of Natural Resources, the Division of Game and Inland Fisheries, and the Division of Marine Resources. Within the Division of Air Pollution and Solid Wastes there are hereby established two Bureaus: the Bureau of Air, and the Bureau of Solid Waste. Within the Division of Natural Resources there are hereby established five Bureaus: the Bureau of Forestry, the Bureau of Minerals, the Bureau of Parks, the Bureau of Mined Land Reclamation, and the Bureau of State Travel.*

§ 10-17.35. *It shall be the duty of the Department to implement the policies of this chapter. Specifically, the Department shall:*

(a) *Maintain an environmental quality monitoring network designed to accumulate data pertaining to environmental quality;*

(b) *Advise the Governor, the General Assembly and such other officers, employees and public bodies of the State as may be appropriate on matters relating to environmental quality and natural resources, the effectiveness of measures designed to enhance environmental quality and better utilize the State's natural resources, and additional measures it believes are necessary to enhance the quality of the State's environment and better utilize its natural resources;*

(c) *Determine the budget for the Department, which shall specifically include separate sub-budgets for each of the five Divisions within*

the Department, each of which sub-budgets shall be approved by the appropriate Board and thereafter shall be submitted by the Commissioner as approved to the Governor;

(d) Administer all funds available to the Department, including the disbursement of funds to any officer, public body, or other person within the State to obtain aid in performing the functions of the Department; provided, however, that the Game Protection Fund and the Public Oyster Rocks Replenishment Fund shall be set aside and disbursements from such funds shall be made in the manner set forth in Chapter 2 of Title 29 and Chapter 5 of Title 28.1 hereof, respectively;

(e) Apply to the appropriate officers and agencies of the United States for federal aid, and cooperate with federal agencies in implementing federal programs; and

(f) Perform such other duties as may be assigned to the Department by law.

§ 10-17.36. The Department shall have authority to:

(1) Sue and be sued in its official name;

(2) Issue, deny, revoke or modify, in accordance with duly adopted standards, policies and regulations, any and all permits, licenses and certificates that may be required by law;

(3) Develop within the Department organizational capability for evaluating proposed projects and programs in terms of their overall impact on the environment;

(4) Reorganize or abolish any Bureau, create one or more new Bureaus, and otherwise establish its own organization; and adopt in a manner it may deem appropriate rules and procedures for its own internal management, after consultation with and concurrence of the applicable Board;

(5) Enter into and perform contracts, execute instruments and determine the character of, and necessity for, the expenditures of the Department; provided, however, that this section shall not affect the setting aside of, or disbursements from, the Game Protection Fund and the Public Oyster Rocks Replenishment Fund provided for in Chapter 2 of Title 29 and Chapter 5 of Title 28.1 hereof, respectively;

(6) Acquire in any lawful manner such personal or real property or any interest therein as it may deem appropriate in the performance of its functions, and maintain and improve such property or dispose of it in such a manner and on such terms and conditions, consistent with law, as it may deem proper;

(7) Accept donated services, grants, gifts and other funds, other than those appropriated by the General Assembly, to carry out the policy of this chapter;

(8) Engage and pay for the services of professional consultants;

(9) Employ or authorize the employment of professional assistants, hearing examiners, budget officers and such other personnel as it may deem appropriate to carry out the policy of this chapter, initially using to the maximum extent feasible personnel of those agencies existing prior to the effective date of this chapter whose duties and authority have been transferred to the Department;

(10) Prescribe the duties and authority of such personnel as are employed, fix their compensation and supervise their activities;

(11) Request information and assistance from other persons;

(12) Initiate and supervise research and natural resource inventory programs;

(13) Conduct such public hearings throughout the State as it may deem appropriate to give citizens the opportunity to contribute ideas regarding environmental quality and natural resources;

(14) Initiate and supervise such programs as it may deem appro-

prate to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solutions and to natural resource use, population and its relationship to environmental problems and natural resource use and other matters concerning environmental quality and natural resources; and

(15) Exercise such other authority as may be assigned to the Department by law.

§ 10-17.37. (1) The Commissioner of Conservation, Development and Natural Resources shall be appointed by the Governor subject to the confirmation of the General Assembly. The Commissioner shall not receive, nor have received within the two years immediately preceding his appointment, a significant portion of his income directly or indirectly from an applicant for or a holder of a permit or certification issuable or issued by the Department or by any agency existing prior to the effective date of this chapter whose duties and authority have been transferred to the Department. Each Commissioner shall serve a four-year term coincident with the full four-year term of the Governor who appointed him. A vacancy in the office of Commissioner other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term subject to confirmation by the General Assembly.

(2) Each of the Divisions of Water Resources, Air and Solid Wastes, Game and Inland Fisheries, Natural Resources and Marine Resources, shall be headed by a Director, each of whom shall be appointed by the Boards of Water Resources, Air and Solid Wastes, Game and Inland Fisheries, Natural Resources and Marine Resources; respectively. A Director shall not receive, nor have received within the two years immediately preceding his appointment, a significant portion of his income directly or indirectly from an applicant for or a holder of a permit or certification issuable or issued by the Division or its predecessor agency to which he is being considered for appointment. Each Director shall serve at the pleasure of the appointing authority. Each Director shall report to the Commissioner and shall perform such duties as are assigned or delegated by the Commissioner or as required by other provisions of law.

§ 10-17.38. The duties and authority of the Department, unless expressly assigned by law to a Board shall be performed and exercised by the Commissioner, who shall be the head and chief executive officer of the Department. The Commissioner shall also perform such other duties and exercise such other authority as may be prescribed by law. The Commissioner shall organize his own office and may, in his discretion, hire such personnel as he may deem necessary to assist him in the performance of his duties and the exercise of his authority hereunder. The Commissioner shall defend all suits brought against the Department or any of its Boards, and all papers required to be served upon the Department or upon a Board shall be served upon him.

§ 10-17.39. In addition to such delegation as is otherwise expressly allowed or required by law, the Commissioner may, in his discretion, assign any duty and delegate any authority of the Department, from whatever source derived, to a Director and may prescribe the extent to which such duties may be reassigned and such authority redelegated by a Director to a bureau; provided, however, that the Commissioner shall delegate to the Director of the Division of Marine Resources the duties and authority of the Commissioner as set forth in §§ 28.1-36.1 through 28.1-197; and further provided, that the Commissioner shall delegate to the Director of the Division of Game and Inland Fisheries duties and authority of the Commissioner as set forth in §§ 29-23.2 through 29-236 and §§ 62.1-167 through 62.1-186; such delegation of duty and authority, however, shall not be deemed to restrict or diminish the duty and authority of the Commissioner to take such steps as needed to promote coordination and efficiency

among the divisions of the Department.

§ 10-17.40. There are hereby established within the Department an Air Pollution and Solid Wastes Board, a Water Resources Board, a Natural Resources Board, a Game and Inland Fisheries Board, and a Marine Resources Board. Each such board shall perform the duties and exercise the authority assigned to it by law. It shall be the duty of each Board to coordinate its actions with all other Boards in the Department in order to insure that all policies, standards, rules and regulations of the Department are internally consistent. To this end, the Commissioner, in conjunction with the Chairmen of the Boards, shall work to establish such procedures as may be necessary to achieve this coordination.

§ 10-17.41. The Air Pollution and Solid Wastes Board shall consist of six members, one of whom shall be the Commissioner of the State Department of Health. The remaining five members shall initially consist of those persons who were members of the State Air Pollution Control Board on the day immediately preceding the effective date of this chapter. The term of each initial member, with the exception of the Commissioner of the State Department of Health, shall expire on the date when his term on the State Air Pollution Control Board would have expired had such board not been abolished. Successors to the initial members shall be appointed by the Governor for terms of four years each subject to confirmation by the General Assembly. A vacancy in the membership of the Board other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term, subject to confirmation by the General Assembly.

§ 10-17.41:1. The Water Resources Board shall consist of eight members, one of whom shall be the Commissioner of Health. The remaining seven members shall initially consist of those persons who were members of the State Water Control Board on the day immediately preceding the effective date of this chapter. The term of each initial member, with the exception of the Commissioner of the State Department of Health, shall expire on the date when his term on the State Water Control Board would have expired had such board not been abolished. Successors to the initial members shall be appointed by the Governor for terms of four years each, subject to confirmation by the General Assembly. A vacancy in the membership of the Board other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term, subject to confirmation by the General Assembly.

§ 10-17.42. The Natural Resources Board shall consist of twelve members. The initial members shall be those persons who were members of the Board of Conservation and Economic Development on the day immediately preceding the effective date of this chapter. The term of each initial member shall expire on the date when his term on the Board of Conservation and Economic Development would have expired had such board not been abolished. Successors to the initial members shall be appointed by the Governor for terms of four years each, subject to confirmation by the General Assembly. A vacancy in the membership of the Board other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term, subject to confirmation by the General Assembly.

§ 10-17.43. The Game and Inland Fisheries Board shall consist of not more than one member from each congressional district. The initial members shall be those persons who were members of the Commission of Game and Inland Fisheries on the day immediately preceding the effective date of this chapter. The term of each initial member shall expire on the date when his term on the Commission of Game and Inland Fisheries would have expired had such Commission not been abolished. Successors to the initial members shall be appointed by the Governor for terms of one to six years, subject to confirmation by the General Assembly, th

terms of not more than two members to expire during the same year. A vacancy in the membership of the Board other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term, subject to confirmation by the General Assembly.

§ 10-17.44. The Marine Resources Board shall consist of seven members. The initial members shall be those persons who were members of the Marine Resources Commission on the date immediately preceding the effective date of this chapter. The term of each initial member shall expire on the date when his term on the Marine Resources Commission would have expired had such Commission not been abolished. Successors to three of the initial members shall be appointed by the Governor for terms coincident with the term of the Governor making the appointments subject to confirmation by the General Assembly. Successors to the remaining four initial members shall be appointed by the Governor for terms of four years each, subject to confirmation by the General Assembly. A vacancy in the membership of the Board other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term, subject to confirmation by the General Assembly.

§ 10-17.45. Notwithstanding any other provision in this chapter with respect to terms of office, the Commissioner and every member of a Board mentioned in § 10-17.40 shall serve until his successor shall have been appointed and shall have qualified, respectively.

§ 10-17.46. Citizen members of each Board shall be citizens of the State; shall be selected 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 his respective Board. No officer, employee or representative of any permit or certificate-holder or of any industry, municipal corporation or county which is an applicant for a permit or certificate from a board shall be appointed to that Board.

§ 10-17.47. Any member of a Board shall serve without compensation but shall receive twenty-five dollars per day for attendance at meetings and his actual expenses incurred in attending meetings of his respective Board and in the performance of any duties as a member or by direction of a Board.

§ 10-17.48. Each member of a Board shall take the oath prescribed by Article II, Section 7, of the Constitution before a court of record of any county or city wherein such member resides. The commission of each member shall be forwarded by the Governor to the clerk of the court of record of the county or city of which such member is a resident, and shall be delivered to such member on the taking of the oath and the giving of the bond prescribed in the following section.

§ 10-17.49. Each member of a Board and the Commissioner shall enter into bond in the penalty of ten thousand dollars, with surety to be approved by the Governor, payable and conditioned as required by § 49-12.

§ 10-17.50. Each Board shall elect its own Chairman and establish its own rules for its internal organization. The Commissioner shall provide staff support to each Board.

§ 10-17.51. Each Board shall meet at least once every three months. Special meetings may be held at any time or place to be determined by the Board upon the call of the Chairman or upon written request of any four members. All members shall be duly notified of the time and place of any regular or special meeting at least five days in advance of such meeting. A majority of the members of a Board shall constitute a quorum for the transaction of business.

§ 10-17.52. Each 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 Commissioner and open for public inspection. Each such Board shall adopt any standards, policies, rules or regulations in accordance with the General Administrative Agencies Act, as supplemented or modified by this chapter and, to the extent not inconsistent with this chapter, as supplemented or modified by the specific provisions of law which pertain to each Board.

§ 10-17.53. Each Board created in § 10-17.40 shall possess and exercise such other powers as are set forth by law.

§ 10-17.54. It shall be the duty of the Attorney General to act in his official capacity for and on behalf of the Department in any matter wherein his services may be requested, and to furnish to the Department his written advice opinion and legal services touching any matter in which the Department may be properly interested.

§ 10-17.55. The Commissioner shall, to the maximum extent feasible, where an applicant has applied for multiple permits for a single project:

(1) consolidate, coordinate and expedite application for, processing of and procedural requirements for the granting of all such permits or certificates, eliminating redundant or overlapping procedures and ensuring that any formal hearings required are consolidated into one such hearing;

(2) rely upon any information required to be furnished by federal law concerning the project to supplement any Department application form;

(3) issue such permits or certificates as may be required for a single project simultaneously;

(4) coordinate the application for, processing of and procedural requirements for the granting of all permits or certificates with the application for, processing of and procedural requirements for the granting of any permits or certificates required for the same project by any provision of federal law, participating where practicable in joint federal-state hearings.

The Director shall submit annually to the General Assembly a Report on Permits and Certificates in which he shall assess in detail (1) his success in achieving the purposes of this section, (2) the causes for any failure to do so, and (3) the changes in legislation that he believes necessary to better achieve those purposes.

§ 10-17.56. Any person whose rights, duties or privileges have been or may be affected by any action or inaction of the Department without a formal hearing may, within ten days of such action or inaction, demand in writing a formal hearing of his complaint and a hearing thereon shall be held as soon as practicable before the Department. The decision in such a formal hearing, or the action or inaction of the Department if such formal hearing is not to be requested, shall constitute a final action of the Commissioner for purposes of § 10-17.59.

§ 10-17.57. Appeals from decisions of the Commissioner issuing or refusing to issue permits or certificates or licenses for a single project shall, to the maximum extent feasible, be consolidated, coordinated, and expedited.

§ 10-17.58. Each Board created in § 10-17.40 shall possess and exercise the power of administrative review as hereinafter set forth, over final actions of the Commissioner in the specific area or areas in which each Board is authorized to establish policy and adopt standards and regulations; provided that each Board shall be empowered to initiate review on its own motion and any final action of the Board taken thereafter shall constitute agency action for purposes of judicial review.

§ 10-17.59. Notwithstanding any other provision of law any person aggrieved by any final action of the Commissioner must seek review of

that action by the appropriate Board prior to seeking judicial review, by filing a petition with the appropriate Board within ten days of the date of that action; provided, however, that this section shall not apply if any party to such appeal notify the Commissioner within ten days of said date, to waive its requirements. The filing of a petition with the appropriate Board shall stay the running of all time limits pertaining to judicial review of the Commissioner's actions until the appropriate Board has served its decision on the parties or until the parties have served a joint waiver under this section on the appropriate Board. The Commissioner shall, within fifteen days of the date of the action being appealed, transmit to the appropriate Board the complete record upon which his action was taken.

§ 10-17.60. *The appropriate Board shall hear the appeal on the record transmitted by the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record, and the appropriate Board in its discretion, may receive such other evidence as the ends of justice require.*

§ 10-17.61. *The appropriate Board may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the findings, conclusions or decisions are (1) in violation of constitutional provisions; or (2) in excess of statutory authority or jurisdiction of the Commissioner; or (3) made upon unlawful procedure; or (4) affected by other error of law; or (5) unsupported by the evidence on the record considered as a whole; or (6) arbitrary, capricious, or an abuse of discretion.*

§ 10-17.62. *The appropriate Board shall within thirty days of the date of the Commissioner's action, render its decision and issue an opinion stating its reasons for the action taken. A copy of the decision and opinion shall be served on each party. On motion of any party, for good cause shown, or upon its own motion, the appropriate Board may extend the time for conducting the reviewing proceedings, rendering its decision and issuing its opinion up to sixty days from the date of the Commissioner's action.*

§ 10-17.63. *The filing of a petition of appeal with the appropriate Board shall not operate to stay the enforcement of the order. The appellant, at any time after the filing of his notice of appeal, may apply to the Chairman of the appropriate Board for a stay. The application shall be on motion after notice to the Commissioner, and a stay pending the appeal before the appropriate Board shall be granted unless it appears to the Chairman that immediate enforcement of the order is essential to the public health or safety. In an order granting a stay, the Chairman may make any provision required to serve the ends of justice, including the granting or continuing in effect of a permit, certificate or license.*

§ 10-17.64. *A decision of the appropriate Board shall constitute agency action for purposes of judicial review pursuant to the General Administrative Agencies Act or other applicable provisions of law.*

§ 10-17.65. (a) *No suit, action, or other proceeding lawfully commenced by or against any officer or employee of the State in his official capacity whose duties have, subsequent to the commencement of such suit, been transferred to the Department pursuant to the provisions of this chapter shall abate by reason thereof. The court may, on its own motion or that of any party, allow the Department to be substituted as a party for any agency, board, department, division or commission which became a component of the Department by operation of the terms of this chapter.*

(b) *All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other lawful actions of whatsoever nature duly promulgated, issued, made or taken by or pursuant to any*

statute of the State in effect immediately prior to the effective date of this chapter and amended in connection with the adoption of this chapter, shall continue in full force and effect until expired or reissued modified, rescinded, revoked, amended or repealed in accordance with such statutes as amended.

CHAPTER 1.4

§ 10-17.66. *It is declared to be the public policy of the Commonwealth, and the purpose of this chapter, to achieve and maintain such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property, will foster the comfort and convenience of its people and their enjoyment of life and property, and will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attraction.*

§ 10-17.67. *The following words, for the purposes of this chapter, shall have the following meanings:*

(a) *“Board” means the Air Pollution and Solid Wastes Board.*

(b) *“Department” means Department of Conservation, Development and Natural Resources.*

(c) *“Commissioner” means Commissioner of the Department.*

(d) *“Air pollution” means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.*

(e) *“Person” as used in this chapter shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.*

(f) *“Special order” means a special order issued under § 10-17.36.*

§ 10-17.68. *The State Air Pollution Control Board and all offices created therein are abolished. The powers and duties heretofore exercised by such Board and by the officers thereof shall hereafter be vested in the Department of Conservation Development and Natural Resources and shall be exercised by or as delegated by the Commissioner unless expressly required to be exercised by the Board. The title to and control of all property and records of every kind and description formerly controlled or held for control by the State Air Pollution Control Board shall be vested in the Commonwealth of Virginia, Department of Conservation, Development and Natural Resources, and all personnel of said Board shall be transferred to the Department. All rules and regulations promulgated by and all permits and certificates issued or control programs approved by the State Air Pollution Control Board shall remain in effect as if promulgated, issued or approved by the Department until subsequently modified or rescinded as may be required by law.*

§ 10-17.69. *It shall be the duty of the Board and it shall have the authority:*

(1)(a) *To establish such air quality standards and policies for the State or any area of the State as are consistent with the general policies set forth in this chapter and to modify, amend or cancel any such standards or policies established.*

(b) *Such standards and policies are to be adopted or modified, amended or canceled only after a hearing held after publication of a notice of the time, place and purpose thereof at least once in at least one newspaper of general circulation in each Air Quality Control Region to which such standards and policies apply not less than thirty nor more than sixty days prior to the day on which the public hearing on the adoption, modification, amendment or cancellation of such standards and policies will be held. Such standards and policies, or the modification, amendment or cancellation*

of such standards and policies will become effective thirty days after they are filed with the Secretary of the Commonwealth.

(2) To adopt such rules and regulations as it deems necessary to enforce the general air quality management programs of the State, such regulations to be effective thirty days after they are filed in the office of the Secretary of the Commonwealth. Such rules and regulations are to be adopted or modified or amended or canceled only after notice and hearing as provided with respect to promulgation of standards and policies.

(3) The standards, policies, rules and regulations shall not promote or encourage any substantial degradation of air quality in any air basin or region at present superior to that stipulated in the standards, policies, rules and regulations.

(4) To hear appeals as provided in §§ 10-17.58 through 10-17.64, § 10-17.70. (a) The Board, in making standards, policies, rules and regulations shall take into consideration all of the facts and circumstances bearing upon the reasonableness of the activity involved and the regulations proposed to control it, including:

(1) The character and degree of injury to, or interference with safety, health or the reasonable use of property which is caused or threatened to be caused;

(2) The social and economic value of the activity involved;

(3) The suitability or unsuitability of such activity to the area in which it is located; and

(4) The practicability, both scientific and economic, of reducing or eliminating the discharge resulting from such activity.

(b) In all cases the Board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area involved and to any lawful business, occupation or activity involved resulting from requiring compliance with the specific requirements of any rule or regulation.

§ 10-17.71. It shall be the duty of the Commissioner and he shall have the authority:

(1) To exercise general supervision and control over the air quality of the State and to administer and enforce this chapter, all permits and special orders promulgated by him thereunder, and all standards, policies, rules and regulations promulgated by the Board thereunder.

(2) To study and investigate all problems concerned with the air quality of the State and to make reports and recommendations thereon, as well as to conduct or have conducted scientific experiments, investigations, studies and research to discover methods for maintaining air quality consistent with the purposes of this chapter, and to conduct educational programs relating to air pollution control.

(3) To cooperate with any public or private agency in the conduct of experiments, investigations and research and to receive grants which may be available from private or public sources to further the purposes of this chapter.

(4) To issue any and all permits or licenses required by the Federal Clean Air Act Amendments of 1970 (P.L. 91-604), and the regulations promulgated thereunder, and to otherwise devise and administer under conditions prescribed by the Board a permit system applicable to new sources of air pollution and the modification of existing sources of air pollution and activities which contribute to air pollution. Revocations or amendments of permits or licenses may be made for good cause and after proper hearings, with at least thirty days' notice to the owner of the time, place and purpose thereof. If a proposed revocation or amendment of a permit or license is mutually agreeable to the Commissioner and the person involved, the hearing and notice may be dispensed with.

(5)(a) To deny permits for the construction of new sources or modification of existing sources of air pollution in locations where such construction or modification will prevent attainment or maintenance of primary and secondary ambient air quality standards established by the Board.

(b) To develop, administer and enforce a plan for the emergency abatement of the emission of air pollutants during periods of air stagnation or when the public health or safety may otherwise require such abatement.

(c) To require the installation, maintenance and use of emission monitoring devices at stationary sources of air pollution and the keeping of appropriate records and the rendering of reports to obtain information necessary to determine compliance with applicable laws, regulations and standards, and to make such information available to the public; provided, however, that the proviso of § 10-17.73 relating to secret processes shall apply to this provision *mutatis mutandis*.

(d) To require persons maintaining or operating stationary sources of air pollution to submit plans for the control of such pollution to the Commissioner for his approval; to enforce such plans as are approved, and to prevent the continued operation, in whole or part as is necessary, of stationary sources for which no satisfactory plan was submitted, or, having been submitted and approved, was not followed or failed to achieve the requisite end.

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

(b) After any rule or regulation has been adopted by the Board pursuant to § 10-17.69 he may in his discretion grant variances therefrom in accordance with criteria established by the Board, if he finds after a thorough investigation and hearing that conditions warrant. In the event variances are permitted, the Commissioner, after notice to the Board, shall issue an order to this effect, after a hearing is held, which order shall be subject to revocation or amendment at any time if the Commissioner after hearing determines such amendment or revocation is warranted.

(7)(a) To issue special orders: (1) to persons who are permitting or causing air pollution as defined by subsection (d) of § 10-17.67, to cease and desist from such pollution; (2) to persons who have failed to construct facilities in accordance with or have otherwise failed to comply with plans for the control of air pollution submitted by them to the Commissioner, to construct such facilities in accordance with, or otherwise comply with such approved plans; (3) to persons who have violated or failed to comply with the terms and provisions of any order or directive issued by the Commissioner, to comply with such terms and provisions; (4) to persons who have contravened duly adopted and promulgated rules and regulations and policies, to cease and desist from such contravention and to comply with such rules and regulations and policies; and (5) to require any person to comply with the provisions of this chapter and any decision of the Commissioner.

(b) Such special orders are to be issued only after a hearing with reasonable notice to the affected persons of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in § 10-17.72; provided, that if the Commissioner finds that any such person is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, whether used for recreational, commercial, industrial, agricultural or

other reasonable uses, after a reasonable attempt to give notice, he shall declare a state of emergency and he may issue without hearing an emergency special order directing the person to cease such pollution immediately, and shall within ten days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel such emergency special order. If the Commissioner finds that a person who has been issued a special order or an emergency special order is not complying with the terms thereof, he may proceed in accordance with § 10-17.75 or § 10-17.80.

(c) Nothing in this section shall limit the Commissioner's authority to proceed against such persons directly under § 10-17.75 or § 10-17.80 without the prior issuance of a special or emergency order.

(8) To control and regulate the internal affairs of, and to establish procedures for, the internal operations of the Department.

§ 10-17.72. Any order of the Commissioner rendered pursuant to hearings under § 10-17.71(7) shall be reduced to writing, and shall contain the explicit findings of fact and conclusions of law upon which the decision of the Commissioner is based. Certified copies of such written decision shall be delivered to, or mailed by certified mail to the parties affected by it and time of effectiveness of the order shall be computed from the date of delivery or receipt thereof, whichever is applicable. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10-17.73. Every person who the Commissioner has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the Commissioner furnish such plans, specifications and information as may be required by the Commissioner in the discharge of his duties under this chapter. Any information as to secret processes, formulae or methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

§ 10-17.74. Whenever it is necessary for the purpose of this chapter, the Commissioner or his designee may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations.

§ 10-17.75. Any person violating, failing, neglecting or refusing to obey any rule or regulation of the Board or any order of the Commissioner may be compelled to obey the same and comply therewith by injunction, mandamus or other appropriate remedy.

§ 10-17.76. The validity of any standards, policy, rule or regulation may be determined upon petition for a declaratory judgment thereon addressed to the Circuit Court of the City of Richmond by any person who might be adversely affected by its enforcement and who alleges that it is invalid. The Commissioner shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the Board to pass upon the validity of the rule in question. The court shall declare the standard, policy, rule or regulation invalid if it finds that it is unconstitutional, exceeds the statutory authority of the Board, or was adopted without compliance with the procedures prescribed in this chapter, or is unreasonable, arbitrary, capricious, and not in the public interest. An appeal may be had from the decision of the court to the Supreme Court as provided by law.

§ 10-17.77. (a) Any owner aggrieved by a final decision of the Commissioner under § 10-17.71, subject to the requirements of §§ 10-17.58 through 10-17.64 regarding Board review, is entitled to judicial review thereof under this chapter in the Circuit Court of the City of Richmond, in term or in vacation. Proceedings for review shall be

instituted by filing a notice of appeal with the Circuit Court of the City of Richmond within thirty days after the date of the order and delivering a copy of said notice of appeal to the Commissioner and to all other parties to the proceeding.

With his notice of appeal, or within thirty days thereafter, the appellant shall deliver to the Commissioner a transcript of the testimony if it was taken down in writing, or, if it was not taken down in writing, a statement of it in narrative form. Within thirty days thereafter, the Commissioner shall transmit to the clerk of the court to which the appeal is taken:

- (1) A copy of the request, if any, for, or notice of, the formal hearing;*
- (2) A copy of the order appealed from;*
- (3) A copy of the notice of appeal;*
- (4) The transcript or statement of the testimony filed by appellant, together with a certificate that it is correct except in specified particulars;*
- (5) The exhibits.*

The failure of the Commissioner to transmit the record within the time allowed shall not prejudice the rights of the appellant. The court, on motion of the appellant, may issue a writ of certiorari requiring the Commissioner to transmit the record on or before a certain date.

(b) The court, sitting without a jury, shall hear the appeal on the record transmitted by the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the findings, conclusions or decisions are (1) in violation of constitutional provisions; or (2) in excess of statutory authority or jurisdiction of the Commissioner; or (3) made upon unlawful procedure; or (4) affected by other error of law; or (5) unsupported by the evidence on the record considered as a whole; or (6) arbitrary, capricious, or an abuse of discretion.

§ 10-17.78. The filing of a notice of appeal from a final decision of the Commissioner under § 10-17.71 shall not operate to stay the enforcement of the Commissioner's order. The appellant, at any time after the filing of his notice of appeal, may apply to the court for a stay. The application shall be on motion after notice to the Commissioner, and a stay pending the appeal shall be granted unless it appears to the court that immediate enforcement of the order is essential to the public health or safety. In the order granting a stay, the court may make any provision required to serve the ends of justice including the granting or continuing in effect of any order or directive of the Commissioner.

§ 10-17.79. The Commonwealth or any party aggrieved by any such final decision of the judge shall have, regardless of the amount involved, the right to apply for an appeal to the Supreme Court. The procedure shall be the same as that provided by law concerning appeals and supersedeas.

§ 10-17.80. (a) Any person violating any provision of the rules and regulations of the Board or failing, neglecting, or refusing to comply with any order of the Commissioner lawfully issued as herein provided shall be guilty of a misdemeanor and upon conviction be liable to a fine of not more than one thousand dollars for each violation within the discretion of the court. Each day of continued violation shall constitute a separate offense.

(b) Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally

the right of any person to damages or other relief on account of injury to persons or property.

§ 10-17.81. The Board is authorized to name technically qualified citizens to a State Advisory Committee on Air Pollution.

§ 10-17.82. (a) The Board may create, within any area of the State, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the Board on its own motion or upon request of the governing body or bodies of the area involved.

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

(c) The local committee is empowered to observe compliance with the regulations of the Board and report instances of noncompliance to the Commissioner, to conduct educational programs relating to air pollution and its effects, to assist the Commissioner in his air monitoring programs, to initiate and make studies relating to air pollution and its effects, and to make recommendations to the Commissioner.

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

§ 10-17.83. The authority of any governing body of a locality to continue in use or to adopt ordinances relating to air pollution shall be as follows:

(a) Existing local ordinances adopted prior to July one, nineteen hundred seventy-two, shall continue in force; provided, that in the event of a conflict between a standard, policy, rule or regulation of the Board and a provision or provisions of a local ordinance, the standard, policy, rule or regulation of the Board shall govern, except when the conflicting provision or provisions of the local ordinances are more stringent than the standard, policy, rule or regulation of the Board, in which event, the local ordinance shall prevail.

(b) The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution after June thirty, nineteen hundred seventy-two, shall first obtain the approval of the Board as to the provisions of such ordinance or amendment. The Board shall not approve any local ordinance less stringent than the pertinent regulations of the Board.

§ 10-17.84. The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provi-

tion of the Environmental Coordination Act of 1973 shall control.

CHAPTER 1.5

§ 10-17.85. The powers and duties heretofore exercised by the State Board of Health pursuant to § 32-9.1 shall hereafter be vested in the Department of Conservation, Development and Natural Resources, hereafter called the Department, hereafter called the Commissioner, unless otherwise expressly required herein to be exercised by the Air Pollution and Solid Wastes Board, hereafter called the Board. The title to and control of all property and records of every kind and description formerly held or controlled by the State Board of Health in connection with the performance of its duties and the exercise of its authority under § 32-9.1 shall be vested in the Commonwealth of Virginia, Department of Conservation, Development and Natural Resources, and all personnel of the Health Department's Bureau of Solid Wastes and Vector Control involved in the solid wastes control functions of that Bureau shall be transferred to the Department of Conservation, Development and Natural Resources.

§ 10-17.86. The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision of the Environmental Coordination Act of 1973 shall control.

§ 10-17.87. It is hereby declared to be the public policy of the Commonwealth to effect, within the Commonwealth, a healthful and economical means of the disposal of solid wastes in such a manner as to cause the minimum deleterious effect on the environment, and a maximum use of natural resources.

§ 10-17.88. On or before January one, nineteen hundred seventy-two, each county, city and town of this State upon written request by the Commissioner, when in his opinion such county, city or town has not provided for proper disposition of its solid wastes shall submit to the Board a plan in a form to be prescribed by the Commissioner, setting forth its plan for garbage and all other solid wastes disposal, which plan shall include the cost, the proposed method of financing, the site or sites to be used and the overall changes in such plan anticipated for the ensuing twenty years. Each county's plan must include the facilities to be used by all towns located therein. Any combination of cities, counties and towns may submit a regional plan in lieu of an individual plan.

§ 10-17.89. It shall be the duty of the Board and it shall have the authority:

(1)(a) To establish such standards of quality and policies for the disposal of solid wastes consistent with the general policies set forth in this chapter, and to modify, amend or cancel any such standards or policies so established.

(b) Such standards and policies are to be adopted or modified, amended or canceled only after a hearing held pursuant to the provisions of the General Administrative Agencies Act.

(2) To approve or disapprove any plan submitted to the Board pursuant to § 10-17.88 above.

(3) To adopt such regulations as it deems necessary to enforce the general solid wastes disposal programs of the State, such regulations to be adopted pursuant to the provisions of the General Administrative Agencies Act.

(4) To hear appeals as provided in §§ 10-17.58 through 10-17.64.

§ 10-17.90. *It shall be the duty of the Commissioner and he shall have the authority:*

(1) *To exercise general supervision and control over solid waste disposal and to administer and enforce this chapter, all provisions thereof, and all standards, policies, rules and regulations promulgated by the Board thereunder.*

(2) *To study and investigate all problems concerned with solid waste disposal and to make reports and recommendations to the Board thereon.*

(3) *To conduct or have conducted scientific experiments, investigations, studies and research to discover methods for solid waste disposal consistent with the purposes of this chapter. To this end the Commissioner may cooperate 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 cooperative agreement. Provided, that such moneys shall be used only for the purposes for which they are contributed and balance remaining after the conclusion of the experiments, investigations, studies, and research shall be returned to the contributors.*

(4) *To prescribe the form for any plan to be submitted to the Board under § 10-17.88 above.*

(5) *To make investigations and inspections, to insure compliance with any provision of this chapter and with any standards, policies, rules and regulations which the Board may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of attaining such compliance; provided, however, that any such action by the Commissioner shall be in conformity with the provisions of the General Administrative Agencies Act.*

(6) *To establish such procedures as are necessary for the internal management of the Department.*

(7) *The Commissioner shall have the power:*

(1) *To counties, cities and towns which have failed to construct facilities in accordance with finally approved plans requested by the Commissioner, to construct such facilities in accordance with finally approved plans and specifications;*

(2) *To counties, cities and towns which have violated or failed to comply with the terms and provisions of any order or directive issued by the Commissioner, to comply with such terms and provisions;*

(3) *To counties, cities and towns which have contravened duly adopted and approved plans to cease and desist from such contravention and to comply with such approved plans; and*

(4) *To require any county, city or town to comply with the provisions of this chapter and any decision of the Commissioner.*

(b) *Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected county, city or town of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection (c) below; provided, that if the Commissioner finds that any such county, city or town is grossly affecting the public health, safety or welfare, or the health of animal or plant life, or to property, whether used for recreational, commercial, industrial, agricultural or other reasonable uses, after a reasonable attempt to give notice, it shall declare a state of emergency and he may issue without hearing an emergency special order directing the county, city or town to cease such violation immediately, and shall within ten days hold a hearing, after reasonable notice as to the time and place*

thereof to the county, city or town to affirm, modify, amend or cancel such emergency special order. If the Commissioner finds that a county, city or town which has been issued a special order or an emergency special order is not complying with the terms thereof, he may proceed in accordance with § 10-17.94.

(c) Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the county, city or town to which such special order is directed shall be notified by certified mail, return receipt requested, sent to the chairman of the board of supervisors, mayor or town or city manager as the case may be, or by personal delivery by an agent of the Commissioner, and the time limits specified shall be counted from the date of receipt.

(d) Nothing in this section shall limit the Commissioner's authority to proceed against such county, city or town directly under § 10-17.94 for violations of the provisions of this chapter or any decision of the Commissioner with the prior issuance of a special order or an emergency order.

§ 10-17.91. Any decision of the Commissioner rendered pursuant to hearings under § 10-17.90(7) shall be reduced to writing, and shall contain the explicit findings of fact and conclusions of law upon which the decision of the Commissioner is based. Certified copies of such written decision shall be mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10-17.92. The Board is authorized to name technically qualified citizens to a State Advisory Committee on Solid Wastes Disposal.

§ 10-17.93. Whenever it is necessary for the purposes of this chapter, the Commissioner or his designee may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations.

§ 10-17.94. Any county, city or town violating, failing, neglecting or refusing to obey any rule or regulation of the Board or any order of the Commissioner may be compelled to obey the same and comply therewith by injunction, mandamus or other appropriate remedy.

§ 10-17.95. The validity of any standard, policy, rule or regulation may be determined upon petition for a declaratory judgment thereon addressed to the Circuit Court of the City of Richmond by any county, city or town which might be adversely affected by its enforcement and which alleges that it is invalid. The Commissioner shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the Board to pass upon the validity of the rule in question. The court shall declare the standard, policy, rule or regulation invalid if it finds that it is unconstitutional, exceeds the statutory authority of the Board, or was adopted without compliance with the procedures prescribed in this chapter, or is unreasonable, arbitrary, capricious, and not in the public interest. An appeal may be had from the decision of the court to the Supreme Court as provided by law.

§ 10-17.96. (a) Any county, city or town aggrieved by a final decision of the Commissioner, subject to the requirements of §§ 10-17.58 through 10-17.64 regarding Board review is entitled to judicial review thereof under this chapter in the Circuit Court of the City of Richmond, in term or in vacation. Proceedings for review shall be instituted by filing a notice of appeal with the Circuit Court of the City of Richmond within thirty days after the date of the order and delivering a copy of said notice of appeal to the Commissioner and to all other parties to the proceeding.

With his notice of appeal, or within thirty days thereafter, the appellant shall deliver to the Commissioner a transcript of the testimony if it was taken down in writing, or, if it was not taken down in writing, a statement of it in narrative form. Within thirty days thereafter, the Commissioner shall transmit to the clerk of the court to which the appeal is taken:

(1) A copy of the request, if any, for, or notice of, the formal hearing;

(2) A copy of the order appealed from;

(3) A copy of the notice of appeal;

(4) The transcript or statement of the testimony filed by appellant, together with a certificate that it is correct except in specified particulars;

(5) The exhibits.

The failure of the Commissioner to transmit the record within the time allowed shall not prejudice the rights of the appellant. The court, on motion of the appellant, may issue a writ of certiorari requiring the Commissioner to transmit the record on or before a certain date.

(b) The court, sitting without a jury, shall hear the appeal on the record transmitted by the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the findings, conclusions or decisions are (1) in violation of constitutional provisions; or (2) in excess of statutory authority or jurisdiction of the Commissioner; or (3) made upon unlawful procedure; or (4) affected by other error of law; or (5) unsupported by the evidence on the record considered as a whole; or (6) arbitrary, capricious, or an abuse of discretion.

§ 10-17.97. The filing of a notice of appeal from a final decision of the Commissioner shall not operate to stay the enforcement of the Commissioner's order. The appellant, at any time after the filing of his notice of appeal, may apply to the court for a stay. The application shall be on motion after notice to the Commissioner, and a stay pending the appeal shall be granted unless it appears to the court that immediate enforcement of the order is essential to the public health or safety. In the order granting a stay, the court may make any provision required to serve the ends of justice including the granting or continuing in effect of any order or directive of the Commissioner.

§ 10-17.98. The Commonwealth or any party aggrieved by any such final decision of the judge shall have, regardless of the amount involved, the right to apply for an appeal to the Supreme Court. The procedure shall be the same as that provided by law concerning appeals and supersedeas.

§ 10-17.99. (a) Any county, city or town violating any provision of this chapter, or failing, neglecting, or refusing to comply with any order of the Commissioner, or a court, lawfully issued as herein provided shall, upon conviction be liable to a fine of not more than one thousand 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.

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

CHAPTER 1.6

Natural Resources Generally

§ 10-17.100. *Whenever and wherever the following words and phrases are used in this title, or in any of the regulations pursuant thereto, the same shall be, unless the context clearly indicates otherwise, construed to mean as follows:*

"Department" means Department of Conservation, Development and Natural Resources.

"Commissioner" means Commissioner of the Department.

"Division" means Division of Natural Resources within the Department.

"Director" means Director of the Division.

"Board" means the Natural Resources Board.

§ 10-17.101. *The Department of Conservation and Economic Development is abolished. The powers and duties heretofore exercised by such Department and by the officers thereof, including the powers and duties at one time vested by law in the Virginia Conservation Commission, the Water Power and Development Commission, the State Geological Commission, the State Geological Survey, the office of the State Geologist, the office of the State Forester, and all the members, officers, agents and employees of such agencies, shall hereafter be vested in the Department of Conservation, Development and Natural Resources and shall be exercised by or as delegated by the Commissioner, unless expressly designated to be exercised by the Natural Resources Board. The title to and control of all property and records of every kind and description formerly held or controlled by the Department of Conservation and Economic Development or the other agencies above mentioned shall be vested in the Commonwealth of Virginia, Department of Conservation, Development and Natural Resources.*

§ 10-17.102. *All property formerly vested in the former Virginia Conservation Commission, or formerly vested in the former Department of Conservation and Economic Development, and now vested in the Commonwealth of Virginia, Department of Conservation, Development and Natural Resources pursuant to Title 10 less Chapters 1.2 and 11 through 14 of that title and plus Chapters 16 and 17 of Title 45, and all other property so vested in the Commonwealth for the Department, and all income from whatever source derived of or for the use of the Department pursuant to such provisions of the Code, shall be exempted from taxation, State and local.*

§ 10-17.103. *Chapter 259 of the Acts of 1936, approved March twenty-five, nineteen hundred thirty-six, codified as § 2542a of the Michie Code 1942, providing that upon the sale of certain lands belonging to the State or any products thereof, there shall be paid to the United States a certain portion of any profit derived by the State as a result of work done pursuant to the act of Congress therein described, is continued in effect.*

§ 10-17.104. *The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision of the Environmental Coordination Act of 1973 shall control.*

CHAPTER 1.7

Proceedings, Actions and Regulations of the Board and the Commissioner

§ 10-17.105. The Natural Resources Board shall be under the duty and it shall have the authority:

(1) to establish such policies and standards as it deems necessary to prescribe for the matters within the jurisdiction conferred upon it by law;

(2) to adopt such rules and regulations from time to time, not in conflict with the laws of this State, concerning the use of properties under its control as will tend to the protection of such property and the public thereon, and to impose in its discretion charges and fees for the use of such properties; violation of any such rule and regulation adopted under this subsection shall constitute a misdemeanor and upon conviction the violator shall be fined not less than five dollars nor more than one thousand dollars for each offense;

(3) to make rules for its own organization, and to have such other general and specific powers and duties as may be conferred upon it by law;

(4) to hear appeals as provided in §§ 10-17.58 through 10-17.64.

§ 10-17.106. It shall be the duty of the Commissioner and he shall have the authority:

(1) to exercise general supervision and control over those matters relating to forestry and minerals, mined land reclamation, parks and recreation, State travel information, and otherwise, as provided in this title less Chapters 1.2 and 11 through 14 and plus Chapters 16 and 17 of Title 45 and as provided by reference thereto in other sections of the Code; and to administer and enforce the laws and regulations of the Commonwealth pursuant thereto, all certificates, licenses and rulings promulgated by him thereunder, and all standards, policies and regulations promulgated by the Board thereunder;

(2) to institute investigations and make recommendations to the Governor upon the Governor's request or as the Commissioner may desire;

(3) to adopt rules for the internal management of the Department;

(4) to employ or authorize the employment of such officers, agents and employees as may be needed in the exercise of the rights, powers and duties by law conferred or imposed upon him or upon the Board, or otherwise by law placed in the Department, and in order to effect a proper organization and carry on the work of the Department:

(a) The duties and titles of such officers, agents and employees may be fixed or authorized to be fixed by the Commissioner, and they shall receive such compensation as may be provided in accordance with law for the purpose.

(b) Proper bonds shall be required of all such officers, agents and employees who shall handle any of the funds which may come into the custody or control of the Department.

(c) In the appointment of officers, agents and employees, through whom the Commissioner shall perform the duties and exercise the powers conferred herein, all positions requiring technical knowledge and experience shall be filled by the appointment of persons possessing such technical knowledge and experience.

(d) The Commissioner, in the appointment of officers, agents, and employees may, with the approval of the Governor, designate such other State officers, or officers in State-supported institutions as may indicate their willingness to accept such appointment; in which case such officers, agents and employees shall serve without additional compensation, other than actual expense incurred in the performance of their duties;

(5) to hear and determine all questions arising out of the official acts of such employees of the Department;

(6) to control the expenditures of any State advertising funds, except such funds as may be appropriated to the Division of Industrial Develop-

ment and Planning established in the office of the Governor, and to control and expend such funds for advertising the resources and advantages of the Commonwealth and in the promotion of tourism in such manner as he may deem best:

(a) *In addition to other expenditures, the Commissioner may expend such funds for the purchase or lease of lands or buildings outside the Commonwealth and for the construction thereon of tourist information stations.*

(b) *The Commissioner shall cooperate so far as it may be practicable and expedient with three organizations in the State engaged in similar or related work, and shall have full power and authority to acquire by gift, bequest or transfer property or funds to be so expended.*

(c) *The Governor may, at any time, direct that any application or other fund available to any department, officer, board, commission, or other agency of the State for publicity or advertising purposes be transferred to the Department of Conservation, Development and Natural Resources, or direct that it be expended for advertising purposes under the supervision of the Commissioner, in the latter of which events the Commissioner shall direct the expenditure of such appropriation or other funds in such manner that he may deem best for the general good of the Commonwealth and the special good of the agency concerned;*

(7) *to render such staff and technical assistance to the Natural Resources Board as the Board may require in the performance of its duties.*

§ 10-20. Advisory Committee on State Parks.—The Governor may appoint an Advisory Committee on State Parks, to consist of five members who shall serve at his pleasure for terms coincident with the term of the Governor.

The Committee shall act in a capacity advisory to the ~~Director~~ Commissioner and the Board on matters relating to State Parks, historic sites, museums and similar projects. When requested so to do by the ~~Director~~ Commissioner or the Board, the Committee shall investigate such questions and consider such problems, so relating, as may be submitted, and shall report ~~their~~ its findings and conclusions. The Committee may also make recommendations to the ~~Director~~ Commissioner and to the Board, on its own initiative.

The members of the Committee shall receive no salaries, but shall be paid their necessary expenses incurred while engaged upon the performance of their duties, and shall be paid the sum of ten dollars for each day or portion of a day upon which they are so engaged.

§ 10-21. Lands of scenic beauty, recreational utility or historical interest.—(1) Acquisition.—The ~~Director~~ Commissioner with the approval of the Board, shall have full power and authority to acquire by gift or purchase or by the exercise of the power of eminent domain, areas, properties, lands or any estate or interest, therein, of scenic beauty, recreational utility, historical interest, remarkable phenomena or any other unusual features which in the judgment of the Board should be acquired, preserved and maintained for the use, observation, education, health and pleasure of the people of Virginia; provided, that such power and authority of acquisition shall be within the limits of any appropriation which may be made by the General Assembly for the purchase of such properties, or of voluntary gifts or contributions placed at the disposal of the Department for such purposes; and the ~~Director~~ Commissioner shall have no power to purchase or contract for the purchase of any property beyond the amount contained in such appropriation or provided by such voluntary gifts or contributions.

(2) Eminent domain proceedings.—The ~~Director~~ Commissioner shall have the power to institute and prosecute any proceedings in the exercise of the power of eminent domain for the acquisition of such

properties for public use in accordance with the laws relating to the exercise of such right and power, being Chapters 1 and 4 (§ 25-120 et seq.) of Title 25.

(3) *Report of Attorney General upon title.*—Before any such property shall be purchased or acquired by condemnation, the ~~Director~~ *Commissioner* may call upon the Attorney General to examine and render a report upon the title thereto, and it shall be the duty of the Attorney General to make such examination and report at the request of the ~~Director~~ *Commissioner*.

(4) *Leasing property or placing in custody of others.*—When any property is acquired by the ~~Director~~ *Commissioner* under the provisions of this section without the aid of any appropriation made by the General Assembly and exclusively with the aid of gifts or contributions placed at the disposal of the Department for that purpose, he may place such property in the custody of the person, persons, or association making such gifts or contributions, or lease the property to such person, persons, or association, for a period not to exceed ninety-nine years, upon terms and conditions approved by the Governor, which, in the opinion of the Board, will best preserve and maintain such property or properties for the use, observation, education, health or pleasure of the people of Virginia.

§ 10-21.1. Conveyance or lease of lands and other properties; easements to public service corporations.—(1) The ~~Director~~ *Commissioner* is hereby authorized and empowered, subject to the consent and approval of the General Assembly, to convey, lease or demise to any responsible individual, organization, association or corporation for such consideration and on such terms as the Board may prescribe, by proper deed or other appropriate instrument signed and executed by the ~~Director~~ *Commissioner*, in the name of the Commonwealth, any lands or other properties held for general recreational or other public purposes by the Commonwealth, for the Department, or over which it has supervision and control, or any part or parts thereof or right or interest therein or privilege with respect thereto; provided, however, that the ~~Director~~ *Commissioner*, subject to the consent and approval of the Governor, may renew any such lease, contract or agreement in effect on December thirty-first, nineteen hundred sixty-nine, without the consent and approval of the General Assembly; and provided further, that whenever land is acquired by purchase or otherwise for public recreational purposes under the administration of the ~~Division of Parks Department~~, the ~~Director~~ *Commissioner* is authorized, without the consent and approval of the Governor and General Assembly, to, immediately following acquisition, lease such land or any portion of it to the owner or owners from whom such land is acquired upon such terms and conditions as may be in the public interest, but no such lease shall be for a period in excess of five years from the date when the land was acquired by the Commonwealth. The ~~Director~~ *Commissioner*, subject to the consent and approval of the General Assembly, is also hereby authorized and empowered to direct the discontinuance of the operation of any or all State parks when in his judgment the public interest so requires.

(2) The ~~Director~~ *Commissioner* is further authorized and empowered, subject to the consent and approval of the Governor, to grant to any public service corporation for such consideration and on such terms as the Board may prescribe, by proper deed or other appropriate instrument signed and executed by the ~~Director~~ *Commissioner* in the name of the Commonwealth, any easement over, upon and across any lands or other properties of any kind or character so held by the Commonwealth or over which it has such supervision and control, provided such easement is consistent with and not in derogation of the general purpose for which

such land or other property is held. No such easement shall be granted for a longer term than ten years but shall be subject to renewal at the discretion of the Governor and of the Board at the end of the period for which it is granted.

(3) Any such conveyance, lease or grant herein authorized shall be subject to such further provisions, conditions, restrictions and reservations as may be approved by the Governor and prescribed by the ~~Director~~ *Commissioner*.

§ 10-21.2. Gifts and funds for State parks to constitute revolving fund.—Gifts of money, entrance and concession fees, and all funds accruing from, on account of, or to the use of State parks of any State park acquired or held by the Commonwealth, other than regular or specific appropriations made by the General Assembly, shall be deemed, unless otherwise specifically provided, to constitute a revolving fund under the direction and control of the ~~Director~~ *Commissioner*, which may be expended in the conservation and development of State parks or of any State park acquired or held by the Commonwealth; and no unexpended part of such fund shall revert to the State treasury at the close of any fiscal year until and unless specific provision therefor is made by an act of the General Assembly.

§ 10-21.3:1. Establishment, protection and maintenance of Appalachian Trail; Statewide system of trails.—(a) The Commonwealth of Virginia, through the ~~Division of Parks of the Department of Conservation, and Economic Development and Natural Resources~~, hereinafter referred to as the ~~Division~~ *Department*, is authorized (1) to enter into written cooperative agreements with landowners, private organizations and individuals and (2) to acquire by agreement, gift or purchase land, rights of way and easements for the purpose of establishing, protecting and maintaining a walking trail right of way across the Commonwealth, under such terms and conditions, including payment by the ~~Division~~ *Department* of property taxes on trail lands or property so acquired or subject to such use, as shall protect the interests of the actual or adjacent landowners or land users and as shall further the purposes of this section. Any department or agency of the Commonwealth, or any political subdivision, may transfer to the ~~Division~~ *Department* land or rights in land for these purposes, on terms and conditions as agreed upon, or may enter into an agreement with the ~~Division~~ *Department* providing for the establishment and protection of the trail.

(b) The Appalachian Trail shall be developed and administered primarily as a footpath, consonant with the provisions of the National Trails Systems Act applicable to the Appalachian Trail as part of the National Scenic Trails System, and the natural scenic beauty thereof shall be preserved insofar as is practicable. The use of motorized vehicles by the general public along the trail is prohibited, and violation of this prohibition shall constitute a misdemeanor; provided, that the owner of private land over which the trail passes may use or authorize use of motorized vehicles on or across the trail for purposes incident to ownership and management of the land; and provided further, that the ~~Division~~ *Department* may authorize use of the trail by motorized emergency vehicles. The ~~Division~~ *Department* may permit other uses of the trail and land acquired hereunder, by the owner of adjoining land or others, in a manner and for purposes as will not substantially interfere with the primary use of the trail, and may grant temporary or permanent rights of way across lands acquired under this section, under terms and conditions deemed advisable. Nothing in this section shall be construed to limit the right of the public to pass over existing public roads which are part of the trail, or to prevent the ~~Division~~ *Department* from performing work necessary for the

purpose of forest fire prevention and control, insect, pest and disease control, and the removal of damage caused by natural disaster. The ~~Division~~ *Department* may enter into cooperative agreements with agencies of the federal government or with private organizations to provide for the maintenance of the trail. No person who has granted a right of way for the trail across his land, or his successor in title, shall be liable to any user of the trail for injuries suffered on such portion of the trail unless the same are caused by his willful or wanton misconduct.

(c) In addition to the above, the Department is authorized to enter into such agreements and to acquire such interest as may be necessary to establish, maintain, protect and regulate a Statewide system of trails in order to provide for the ever-increasing outdoor recreational need of an expanding population, and in order to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural and remote areas of the State. Such Statewide system of trails shall be composed of:

(1) Scenic trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological or cultural qualities of the areas through which such trails may pass;

(2) Recreation trails to provide a variety of outdoor recreation uses in or reasonably accessible to urban areas; and

(3) Connecting trails or side trails to provide additional points of public access to recreation trails or scenic trails, or to provide connections between such trails, or to provide access from urban areas to major outdoor recreation sites. Each trail shall be limited to foot, horse or non-motorized bicycle use, or a combination thereof, as deemed appropriate by the ~~Division~~ *Department*. Such Statewide system of trails may contain, at the discretion of the ~~Division~~ *Department*, camping sites, shelters, and related public-use and management facilities, which will not substantially interfere with the nature and purposes of the trails. The use of motorized vehicles by the public shall be prohibited along any of the scenic, recreation or connecting trails. The provisions contained in paragraphs (a) and (b) of this section shall apply, mutatis mutandis, to the provisions of this paragraph.

§ 10-21.5. Members of Commission; appointment; terms; vacancies.—The Commission shall be composed of nine members as follows: The ~~Director~~ *Commissioner* of the Department of Conservation, and ~~Economic~~ *Development and Natural Resources*, the Director of the Division of Industrial Development and Planning, the ~~Executive~~ Director of the ~~Commission~~ *Division* of Game and Inland Fisheries and the State Highway Commissioner shall serve as ex officio members; five members shall be appointed by the Governor from the State at large subject to the confirmation of the General Assembly. Initially, the five members-at-large shall be appointed for the following terms: Two for a term of four years, two for a term of three years, and one for a term of two years. Thereafter, successors to members-at-large whose terms expire shall be appointed for terms of four years. No member-at-large having served two terms shall be eligible for reappointment to the Commission until four years have elapsed. All terms shall begin July one. Appointments to fill vacancies occurring shall be for the unexpired term.

§ 10-22. Subject to the approval hereinafter provided for, the owner of any forest land, or land suited to the growth of timber, desiring to do so may offer the same subject to pasturage, to the Department of Conservation, and *Development and Natural Resources* as a forest, game, fish and recreation reserve, to be dealt with in accordance with the provisions of this chapter.

§ 10-23. Examination and report on offer.—Whenever such land is

tendered the Department of Conservation and Development as a forest, game, fish and recreation reserve, it shall be the duty of the State Forester and the Commission of Game and Inland Fisheries, or its delegated employee, Commissioner to examine the same or cause the same to be examined and report to the Director and the Commission of Game and Inland Fisheries for the purpose of determining whether or not the land shall be accepted as a forest, game, fish and recreation reserve in accordance with the provisions of this chapter.

§ 10-24. Acceptance; delivery of lease; duty of State agencies; hunting, fishing and recreational rights.—In the event that such land is accepted as a forest, game, fish and recreation reserve, the owner of the land shall deliver to the Director Commissioner a written lease thereof, under seal, leasing the land to the Commonwealth of Virginia, Department of Conservation, and Development, and Natural Resources until such time as the timber thereon shall become suitable for marketing as lumber and to the Commission of Game and Inland Fisheries, a written lease thereof, under seal, leasing the exclusive hunting, fishing and recreational and timber rights or privileges on the land, or any of such rights, so long as it may remain in the reserve so long as such rights shall continue in the Department. Thereafter It shall be the duty of the State Forester Commissioner and his employees agents to aid in the development and the increase of the forest resources of such land, and it shall be the duty of all employees of the several divisions in the Department of Conservation and Development to protect, so far as it is possible, such forest, game, fish and recreation reserve from fires and trespasses, and the duty of the Commission of Game and Inland Fisheries to propagate and protect game and fish and promote recreation therein, and issues except that it shall be the duty of the Game and Inland Fisheries Board to promulgate rules and regulations therefor. From the time the land is leased as authorized by this section, the State shall possess exclusive hunting, fishing and recreational rights on the land included in such leases; except that owners of land entered in the reserve, their families and tenants, actually residing on the land shall be allowed, without cost to themselves, such rights and privileges, as the Commission of Game and Inland Fisheries Department is herein authorized to sell; however, such rights and privileges shall be limited to the land of the owner, and in the case of tenants, to land on which they actually reside.

§ 10-25. Sale of hunting, fishing and recreational privileges.—The Commission of Game and Inland Fisheries Department, upon consent of the Game and Inland Fisheries Board, is authorized to sell hunting, fishing and limited recreational privileges on any forest, game, fish and recreation reserve created under the provisions of this chapter for an annual fee of not less than five dollars nor more than fifteen dollars per person, except that nonresidents of the State shall be charged not less than ten dollars nor more than fifteen dollars for these privileges; and also the Commission Department, with such consent may in its discretion issue a limited recreation privilege, which shall not entitle the purchaser thereof to hunting or fishing privileges, and charge therefor, whatever fee it may deem proper. The above charges are to be in addition to the hunting and fishing licenses prescribed by law. The license issued for such fee shall entitle the holder thereof to hunt and fish, except in the case of holders of limited recreation privileges, on all forest, fish and recreation reserves created under the provisions of this chapter during the regular hunting and fishing seasons prescribed by law and to camp thereon at any time, all under such rules and regulations as the Commission of Game and Inland Fisheries may prescribe. Such Commission The Commissioner upon advice of the Game and Inland Fisheries Board may in its discretion at any time close any area in such reserve against all hunting, fishing and recreation,

for the purpose of establishing sanctuaries thereon.

§ 10-26. Disposition of funds; protection of areas; taxation.—All funds accrued from the sale of hunting, fishing and camping, and limited recreation privileges on State forest, game, fish and recreation reserves shall be paid into a fund in the State treasury to be designated as the “forest, game, fish and recreation reserve fund”, and used for the payment of taxes on the real estate embraced in such areas hereinafter provided, and for the benefit and administration thereof, and for the purchase of State-owned forest demonstration and game and fish propagation and recreation areas. It shall be the duty of the ~~Commission on Game and Inland Fisheries~~ *Department* to protect and propagate fish and game in such forest, game, fish and recreation areas and to prevent trespass and violations of the game and fish laws. It shall be the duty of the game and forest wardens to extinguish and prevent fires and to protect the area from timber or other pillage and trespass, but the Commonwealth shall not be liable for the failure of any of its officers or employees to discharge the duties imposed upon them by law, nor shall the Commonwealth be liable for any injury or destruction of the timber growing on such area. When any area has been accepted by the Commonwealth as a forest, game, fish and recreation reserve, the buildings, improvements and tillable land therein are to be assessed separate from the forest land and land suited to the growth of timber. Thereafter on forest land or land suited to the growth of timber, no tax or local levies thereon shall be paid, unless the owner desires so to do, or the collection thereof be enforced, but the taxes or levies imposed thereon shall be entered each year by the county clerk in a book specially kept for the purpose, designated as the “forest, game, fish and recreation reserve deferred tax book”, and the accrued taxes shall carry an annual interest rate of six per centum per annum and shall be a lien upon the land or lands embraced in such reserve, and shall be payable, if not sooner paid, at such time as the timber on the reserve is marketed, or is matured for marketing, which maturity shall be determined by the sole judgment of the ~~Director~~ *Commissioner* or his delegated ~~employee~~ *agent*; however, in no event shall any taxes be deferred for a period longer than forty years.

Any purchaser of timber on the reserve shall be charged with notice of all taxes that have accrued against the land, and shall be personally required to see to the payment of all such taxes before any part of the timber on such area is removed therefrom. So far as it is possible, the funds derived from the sale of hunting, fishing, and recreational privileges herein provided for shall be used in advancing to the several counties the taxes or levies which have accrued on such forest, game, fish and recreation reserves, and for the purposes set forth in this section. When and as such liens are paid to the county by the Commonwealth, the county's lien for the taxes paid shall pass to and become the property of the Commonwealth and thereafter the amount thereof so paid, with accrued interest thereon, shall be paid to the Commonwealth as a prerequisite to the removal of any timber from such area as provided in this section. Neither this section nor any portion of this chapter shall prevent any owner of land entered in this reserve from paying taxes thereon at any time, nor will such payment relieve such owner from any other provisions of this chapter.

§ 10-27. Withdrawal of lands.—Any person leasing his land for a forest, game, fish and recreation reserve may withdraw the same from such reserve at any time after three months' notice to the ~~Director~~ *Commissioner* of his intention to do so, but as a prerequisite to withdraw therefrom, he shall pay to the county or to the Commonwealth, as the case may be, the amount of all tax liens thereon, together with accrued

interest, at the rate of six per centum per annum from the first of December of the year in which such taxes were assessed or were levied. However, in the event of such withdrawal during the first ten years of entry, the State may retain its lease of the hunting, fishing and recreational rights and privileges for a term of five years from expiration of withdrawal notice, unless a fee of not less than five cents nor more than fifteen cents per acre for land withdrawn be paid to the State, in which event the State will surrender such rights and privileges at the expiration of the notice period. The amount of this fee within the limits above named, is to be determined by the ~~Commission of~~ Game and Inland Fisheries *Board*.

§ 10-28. Acceptance by county of provisions of chapter.—The provisions of this chapter shall not become operative in any county, except as hereinafter provided, unless and until, on petition of the governing body of the county, the circuit court, or the judge thereof in vacation, in its or his discretion, by order entered of record, require the judges of election on the day fixed in the order, not less than sixty days from the date of such order, to open a poll and take a sense of the qualified voters of the county on the question whether the provisions of this chapter shall be accepted by the county or not. In the calling and holding of such election, the same procedure shall be followed as is provided in § 15-602, except that the tickets or ballots shall have written or printed thereon the words “For the acceptance by county of Chapter 2 of Title 10 of the Code of Virginia, relating to the creation of forest, game, fish and recreation reserves and postponing the payment of all taxes thereon” and “Against the acceptance of Chapter 2 of Title 10 of the Code of Virginia, relating to the creation of forest, game, fish and recreation reserves and postponing the payment of all taxes thereon”. If it shall appear by the report of the commissioners of election that a majority of qualified voters of the county voting on the question are in favor of accepting the provisions of this chapter, the circuit court at its next term, shall enter of record such fact and thereafter the provisions of this chapter shall be in full force and effect in such county. Copies of the court order shall be forwarded to the ~~Director, the Commission of Game and Inland Fisheries Commissioner, and the State forester~~. A county once accepting the provisions of this chapter shall not be permitted to withdraw its acceptance as to land which has been leased prior thereto to the Commonwealth in accordance with the provisions of this chapter, but the Commonwealth shall have the right at anytime, acting through the General Assembly, to repeal the provisions of this chapter or to abolish any reserve or reserves created under the provisions thereof. In the event that the reserve is abolished by act of the General Assembly after acceptance by any county, tax liens accruing on any real estate entered in such reserve shall not be enforced against the same for a period of five years from the date such reserves was abolished, except as otherwise provided in this chapter. The Commonwealth shall have the right at any time on three months’ notice to the owner thereof, to eliminate from the reserve any lands entered thereon when, in the opinion of the ~~Director Commissioner and Division of~~ Game and Inland Fisheries *Board*, such land is deemed not suited for the purposes for which the reserve is created.

§ 10-29. Effect of failure to adopt provisions of chapter.—Should the governing body of any county fail to adopt the provisions of this chapter, as set forth in the preceding section, then the owners of any lands in such county, suited to entry in the reserve may enter the same in the reserve, in which event such lands shall not be subject to the provisions of this chapter providing for the assessments thereof and the deferment of taxes, and in lieu thereof, each of the owners shall receive annually,

one-half of such a sum as may result from dividing the total receipts from the sale of all hunting, fishing and recreational privileges on the reserve, by the total number of acres of land entered in the reserve, and multiplying the same by the number of acres owned by such owner; and the State is to retain the other half of such sum, the same to be used for the purposes set forth in § 10-26. The provisions of this section are also to apply to all persons entering lands in the reserve and paying taxes annually thereon as at present. The ~~Commissioner~~ *Commissioner*, upon consent of the ~~of~~ Game and Inland Fisheries Board, is also authorized under this section and subject to the provisions thereof, to lease the hunting, fishing and recreational rights and privileges on any lands not eligible to entry under § 10-22.

§ 10-30. Cutting and removal of timber.—When tax liens acquired under the provisions of this chapter are owned by the State, the ~~Director~~ *Commissioner* is authorized, and when such liens are owned by the county, the ~~Director~~ *Commissioner* and the governing body thereof are authorized to issue permits to cut and remove portions of timber from lands in the reserve, when in their opinion a sufficient amount of the deferred taxes have been paid, as would justify the release of such portions of timber, without jeopardizing the interests of the State or county. Such cutting or removal of timber is to be done under the rules and regulations of the ~~Director~~ *Natural Resources Board*.

§ 10-31. Promulgation of rules and regulations.—The ~~Director~~, with the approval of the *Natural Resources Board*, is authorized to promulgate and enforce rules and regulations pertaining to the administration of forestry on the reserve; and the ~~Commissioner~~ of Game and Inland Fisheries Board is authorized to ~~issue~~ promulgate and enforce rules and regulations pertaining to hunting, fishing and recreation on the reserve. *Such rules and regulations shall be enforced by the Commissioner.*

§ 10-32. The care, management and preservation of the forest reserves of the State and the forests thereon, and all moneys appropriated in that behalf, or collected therefrom in any way, and all personal and real property acquired to carry out the objects of this chapter, shall be subject to the control of the ~~Director of Conservation and Development~~ *Commissioner*, and, to such extent as may be expressly provided by law, the Board of ~~Conservation and Development~~.

They shall observe, keep in view and, so far as they can, ascertain and follow and put into effect the best methods of reforesting cut-over and denuded lands, foresting waste lands, preventing the destruction of forests by fire, the administering of forests on forestry principles, the instruction and encouragement of private owners in preserving and growing timber for commercial and manufacturing purposes, and the general conservation of forest tracts around the headwaters and on the watersheds of all the watercourses of the State.

§ 10-33. (1) Purchases and gifts.—The ~~Director~~ *Commissioner*, with the approval of the Board, shall have authority to purchase in the name of the State lands suitable for State forests. He may, with such approval, accept gifts of land and money to the State for forestry purposes, which gifts must be absolute, except that mineral and mining rights over and under land donated may be reserved by the donors, and except that the land shall be administered as State forests.

(2) Acquisition of lands from United States or agency thereof.—The ~~Director~~ *Commissioner*, with such approval, shall also have power and authority to accept gifts, donations and contributions of land from the United States, or any agency or agent thereof, and to enter into agreements with the United States, or any agency or agent thereof, for the acquisition by purchase, lease, or otherwise, of such lands as the Board may deem suitable for State forests, and to pledge and apply on the pur-

chase price of any land or lands so acquired not to exceed one-half of the gross proceeds derived from such lands.

(3) Control of lands and products; rules and regulations.—The ~~Director~~ *Commissioner* shall have authority to provide for the management, development and utilization of any such lands purchased, leased or otherwise acquired, to sell or otherwise dispose of products on or derived from the land, and to enforce such rules and regulations governing State forests, the care and maintenance thereof, and the prevention of trespassing thereon, and such other rules and regulations deemed necessary to carry out the provisions of this section, as may be made by the Board.

(4) *Limitation on expenditures.*—In exercising the powers conferred by this section, the ~~Director~~ *Commissioner* shall not obligate the State for any expenditure in excess of any funds either donated or appropriated to the Department for such purpose.

(5) Portion of proceeds going to counties.—One-fourth of the gross proceeds derived from any lands so acquired by the ~~Director~~ *Commissioner* shall be paid annually by the ~~Director~~ *Commissioner* to the counties in which such lands are respectively located, and shall become a part of the general funds of such counties.

§ 10-34.1. Delinquent lands purchased by the Commonwealth.—When real estate sold for delinquent taxes and purchased by the Commonwealth is not redeemed by the previous owner, his heirs or assigns, or some person having the right to charge the same with a debt, within two years from the date of such purchase, such real estate shall not be subject to further sale if the ~~Director~~ *Commissioner*, with the approval of the Board, shall file with the clerk of the court in the county wherein it is situated an application for the fee simple title to such real estate and a copy of a report on the same by the State Forester, setting forth his belief that it is chiefly valuable for forestry purposes and his reasons for such belief. Upon receipt of the application and report from the ~~Director~~ *Commissioner* by the clerk, the same procedure shall be followed as is required under the provisions of Title 58 relating to the sale of delinquent lands purchased in the name of the Commonwealth and unredeemed, and after all the necessary action has been taken to protect the interest of the former owner or any person having the right to redeem the land, the clerk shall prepare and deliver to the ~~Director~~ *Commissioner* a deed conveying the same with special warranty of title.

All lands so conveyed shall be without cost to the Commonwealth except for the usual fees and costs as provided for in such provisions of Title 58 and shall be subject to such laws and regulations as are now in effect, or which may be enacted later for the regulation, management, protection and administration of State forests.

After any such land shall have been so acquired by the Commonwealth, there shall be paid annually by the ~~Director~~ *Commissioner* to the counties in which such lands may lie, respectively; one-fourth of the gross returns therefrom, the amounts so paid to such counties to be applied by the several boards of supervisors for such purposes as they may deem most expedient.

§ 10-34.2. Waste and unappropriated lands.—Any waste and unappropriated land, other than unappropriated marsh or meadow lands lying on the eastern shore of Virginia, as exempted from entry and grant by the provisions of § 41-8.1, may be set apart permanently for use as State forest land, by a grant and proclamation signed by the Governor upon the receipt from the ~~Director~~ *Commissioner* of an application, made with the approval of the Board, requesting that a certain piece, tract or parcel of waste and unappropriated land to be so set apart. With the application the ~~Director~~ *Commissioner* shall submit a copy of a report from the State

Forester describing fully the location of the land, its character and suitability for forestry purposes together with a complete metes and bounds description of the boundary of the tract and if in the opinion of the Governor the land is more valuable for forestry purposes than for agricultural or any other purposes he may authorize the State Librarian to prepare a grant for his signature and the lesser seal of the Commonwealth.

All lands so granted shall be subject to such laws and regulations as are now in effect or which may later be enacted for the regulation, management, protection and administration of State forests.

§ 10-35. Employment of engineer and surveyor.—The ~~Director~~ *Commissioner* shall have power to employ a civil engineer and surveyor from time to time, with his necessary assistants, whenever the necessities of the case may require.

§ 10-36. Establishment of nurseries; distribution of seeds and seedlings.—The ~~director~~ *Commissioner* may establish and maintain a nursery or nurseries, for the propagation of forest tree seedlings, either upon one or more of the forest reservations of the State, or upon such other land as he may, and which he is empowered to, acquire for that purpose. Seedlings from this nursery may be furnished to the Commonwealth without expense for use upon its forest reservations or other public grounds or parks. Seeds and seedlings may also be distributed to landowners and citizens of the Commonwealth under and subject to such rules and regulations as may be established by the Board.

§ 10-37. Sale of trees.—For the purpose of maintaining in perpetuity the production of forest products on State forests, the ~~Director~~ *Commissioner*, upon the recommendation of the State Forester, may cause to be designated and appraised such of the trees as should be cut under the principles of scientific forest management, and may sell the same for not less than the appraised value thereof. When the appraised value of the trees to be sold is more than three thousand dollars, the ~~Director~~ *Commissioner*, before making sale thereof shall receive bids therefor, after notice by publication once a week for two weeks in two newspapers of general circulation; but the ~~Director~~ *Commissioner* shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from the sale of the timber and trees so sold, except as provided in subsection (5) of § 10-33, shall be paid into the State treasury, and shall be held as a special fund for the improvement or protection of State forests or for the purchase of additional lands, and shall be paid out in like manner as money appropriated for the use of the ~~Department~~ *Division of Natural Resources*.

§ 10-38. Sale or lease of gas, oil or minerals.—The ~~Director~~ *Commissioner*, with the approval of the Board, is empowered to make and execute contracts and leases in the name of the Commonwealth, for the removal or mining of gas, oil, or any valuable minerals that may be found in the forestry reservations whenever it shall be made to appear to the Board that it would be for the best interest of the Commonwealth to make such disposition of such gas, oil, or minerals; but before contract or lease is made the same shall be approved by the Governor, and bids therefor shall be received after notice by publication once a week for four weeks in two newspapers of general circulation. The ~~Director~~ *Commissioner* shall have the right to reject any or all bids and to readvertise for bids. The accepted bidder shall give bond with good and sufficient surety to the satisfaction of the ~~Director~~ *Commissioner*, and in such amount as it may fix for the faithful performance on his part of all the conditions and covenants of such contract or lease. The proceeds arising from any such contract or lease, except as provided in subsection (5) of § 10-33, shall

be paid into the State treasury, to be held and used for the same purpose as the proceeds from the sale of trees and timber, and to be paid out in like manner.

§ 10-39. Forest reserve fund.—All money obtained from the State forestry reserves, except as provided in subsection (5) of § 10-33, shall be paid into the State treasury, to the credit of the forest reserve fund, which fund is hereby created; and the moneys in such fund are hereby appropriated for the purposes of forest protection, management, replacement, and extension, under the direction of the ~~Director~~ *Commissioner*.

§ 10-40. Account of receipts and disbursements; report to General Assembly.—The ~~Director~~ *Commissioner* shall keep a full and accurate account of the receipts and expenditures of the Department, and he shall make a full and accurate and complete report to each session of the General Assembly, showing in detail the receipts from all sources and the expenditures and the purposes for which expenditures have been made.

§ 10-41. Preservation of evidence as to conserving forest supply; reports to General Assembly publications.—The ~~Director~~ *Commissioner* shall preserve all evidence which may be taken by himself or by the Board with reference to conserving the forest supply of the State and the methods best adapted to accomplish such object, and shall make report of their doings, conclusions and recommendations to each session of the General Assembly, and, from time to time, publish, in a popular manner, and print for public distribution, in bulletin or other form, such of their conclusions and recommendations as may be of immediate public interest.

§ 10-46. Counties and certain cities to pay monthly sums for forest protection, etc.—(a) Each county in this State, or city which enters into a contract with the ~~State Forester~~ *Department* under § 10-46.1 to provide forest fire prevention, upon presentation to its governing body of an itemized statement duly certified by the ~~Director~~ *Commissioner* shall repay into the State treasury monthly beginning July first, nineteen hundred and forty-five, in the case of counties and, in the case of cities, on March first, nineteen hundred and sixty-four, any amounts expended in the preceding month by the ~~Director~~ *Commissioner* in such county or city for forest protection, forest fire detection, prevention and suppression, not exceeding in any one year an amount measured by the acreage, computed upon the basis of one cent an acre, of privately-owned forests in the county or city, according to the United States Forest Survey of nineteen hundred and forty subject to additions and deductions of acreage since the making of this survey. In any additions or deductions of acreage from that given by this survey, any land, other than commercial orchards, sustaining as its principal cover a growth of trees or woody shrubs shall be considered forest land, irrespective of the merchantability of the growth, and cut-over land, shall be considered as forest land unless or until it has been cleared or improved for other use. Open land shall be considered as forest land when it bears at least eighty well distributed seedlings or sprouts of woody species per acre. The amounts so repaid by the counties or cities into the State treasury from time to time shall be credited to a special fund for forest protection, forest fire detection, prevention and suppression in the State, and, with such other funds as may be appropriated by the General Assembly or contributed by the United States or any governmental or private agency for these purposes, shall be used and disbursed by the ~~Director~~ *Commissioner* for such purposes. In cities this paragraph shall be subject to § 10-46.1.

(b) In any case in which the ~~Director~~ *Commissioner* and the governing body of any county or city cannot agree upon the additions or deductions to privately-owned forest acreage in a particular county or city, or to changes in forest acreage from year to year, the question shall be

submitted to the judge of the circuit or corporation court of the county or city by a summary and informal proceeding, in term or vacation, and the decision of the judge certified to the governing body and to the ~~Director~~ *Commissioner*, respectively, shall be conclusive and final.

§ 10-46.1. Application of Articles 2, 3 and 4 to cities; ~~State Forester~~ *Commissioner* authorized to enter into contracts with cities.—(a) In addition to the application of Articles 2 (§ 10-46 et seq.), 3 (§ 10-51 et seq.) and 4 (§ 10-55 et seq.) to forest lands lying in counties, such articles shall also apply to forest lands lying within cities. For the purposes of such articles, as applied to cities, forest land shall be considered as comprising land which bears at least eighty well distributed seedlings or sprouts of woody species per acre and which land is primarily devoted to the growth and production of timber and other forest products for commercial purposes.

(b) ~~The State Forester, with prior written approval of the Director of the Department of Conservation and Economic Development~~ *Commissioner* is authorized to enter into contracts prepared by the Attorney General with the governing body of any city in which any such forest land is located. Any such contract, among other matters, shall include provision for the ~~State Forester~~ *Commissioner* to furnish forest fire prevention, forest fire detection, and forest fire suppression services together with enforcement of those provisions of State law applicable to forest fires on forest lands upon any such lands located within a city. The services so provided by the ~~State Forester~~ *Commissioner* shall be of the same general type, character, and standard as the same services provided in counties generally.

§ 10-50. ~~The Director~~ *Commissioner* is authorized to supply from any forest tree nursery or nurseries such forest tree seedlings and transplants as may be necessary and suitable for reforesting any part or all of any lands acquired or owned and administered by any county, city or town as provided in § 10-48, and to furnish such technical assistance and supervision as he may deem necessary for the proper management and administration of such lands and forests thereon, free of cost to the counties, cities and towns; provided, that the respective counties, cities and towns shall agree to administer such lands in accordance with the practices and principles of scientific forestry as determined by the ~~Director of the Board~~.

§ 10-51. ~~The Director~~ *Commissioner* is authorized to designate, upon request, forest trees of private forest landowners for sale or removal, by blazing or otherwise, and to measure or estimate the volume of the same under the terms and conditions hereinafter provided.

§ 10-52. The administration of the provisions of this article shall be by the ~~State Forester~~ *Commissioner* ~~under the supervision of the Director~~ *Commissioner* ~~who may delegate said duties and powers to the Director of the Division of Natural Resources and the State Forester~~. The State Forester, or his authorized agent, upon receipt of a request from a forest landowner for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products, by blazing, spotting with paint, or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the forest landowner with a statement of the volume of the trees so designated and estimated, and he may offer general forestry advice concerning the management of the landowner's forest.

§ 10-54. Disposition of fees.—All moneys paid to the State Forester for services above described shall be deposited in the State treasury to the credit of the ~~Department of Conservation and Development~~, to be used in

rendering additional similar scientific forestry services to the landowners of this State.

§ 10-54.1. Specialized services or rentals of equipment to landowners; fees, disposition of proceeds.—The State Forester, whenever directed to do so by the ~~Director~~ *Commissioner*, may cooperate with landowners, counties, municipalities and State agencies, by making available forestry services consisting of specialized or technical forestry equipment and operator, or rent to them such specialized equipment. For such services or rentals, a reasonable fee, representing the State Forester's estimate of the cost of such services or rentals, shall be charged.

All moneys paid to the State Forester for such services or rentals above described shall be deposited in the State treasury to the credit of the ~~Forestry Division, Department of Conservation and Economic Development~~, to be used in the further protection and development of the forest resources of this State. The landowner, county, municipality or State agency receiving such services or rentals, upon presentation of a statement, shall pay to the State Forester, within thirty days, the amount of charge shown on the statement.

§ 10-55. Appointment and compensation of forest wardens; oath; powers.—Whenever the ~~Director~~ *Commissioner* considers it necessary, he may apply to the Governor to commission such persons as the ~~Director~~ *Commissioner* may designate to act as forest wardens of this State, to enforce the forest laws, and, under his direction through the State Forester, to aid in carrying out the purposes of this chapter. Such wardens shall receive such compensation as may be provided in accordance with law for the purpose. Forest wardens thus appointed shall, before entering upon the duties of their office, take the proper official oath before the clerk of the court of the county or city in which they reside, after which they shall, while holding such office, possess and exercise all the authority and power held and exercised by constables at common law and by arresting officers under the statutes of this State, so far as arresting and prosecuting persons for violations of any of the forest fire laws or of any of the laws or rules or regulations enacted or made, or to be enacted or made, for the protection of the State forestry reserves or other forest lands, or for the protection of the fish and game contained in the State forestry reserves, are concerned. The State Forester, under the supervision of the ~~Director~~ *Commissioner*, may designate certain forest wardens to be special forest wardens. Such special forest wardens so designated shall have the same authority and power as sheriffs throughout the State to enforce the forest laws and may serve original process and mesne process in all matters arising from violation of such forest laws.

§ 10-57.1. Rewards for information leading to conviction of arsonists or incendiaries.—The State Forester shall be authorized, whenever it appears to him that forest fires in any part of the State are caused by arsonists or incendiaries unknown, to offer a monetary reward to any person or persons for information sufficient to procure conviction of the person or persons responsible for such fire in a court of appropriate jurisdiction; provided, however, that no law enforcement officer paid in whole or in part from public funds or employee of the ~~Division of Forestry Department~~ shall be eligible to receive such reward.

All such reward money shall be paid from funds appropriated for the protection and development of the forest resources of this State, and shall not exceed either two thousand dollars paid in any one fiscal year or one hundred fifty dollars paid to any one person for information leading to any one conviction.

§ 10-68. Necessity for permits.—No person shall hunt or trap in this State on any lands which are under the jurisdiction and control of the

~~Department of Conservation and Development~~ by virtue of purchase, gift, lease or otherwise, and which are administered as State forests, without first obtaining, in addition to such other licenses and permits as are required by law, such special use permits as may be required by the ~~Director~~ *Commissioner* pursuant to the provisions of this article.

§ 10-69. The ~~Director~~ *Commissioner* is authorized, with the approval of the Board, to require any person who shall enter upon, occupy, or use, for the purpose of hunting or trapping any of the lands described in § 10-68 to obtain a special use permit or special use permits therefor. Permits to enter upon, occupy, or use any of such lands for the purpose of hunting shall be issued for such fee, not to exceed one dollar annually for each permit, as shall be fixed by the Board. Permits to enter upon, occupy, or use any of such lands for the purpose of trapping may be issued in combination with the hunting permits, or separately, at a fee not to exceed one dollar annually for each such permit, to be fixed by the Board.

§ 10-70. Limitations on rights of holders of permits.—Each such permit shall entitle the holder thereof to hunt and trap, or to trap, as the case may be, in and upon such lands of the State forests as shall be determined by the ~~Director~~ *Commissioner* and designated on the permit, subject to all other applicable provisions of law or regulations of the ~~Commissioner~~ of Game and Inland Fisheries *Board* and to such further conditions and restrictions for safeguarding the State forests as may be imposed by the ~~Director~~ *Commissioner* and indicated on the permit. For such purpose the ~~Director~~ *Commissioner* is further authorized to impose such restrictions and conditions upon hunting and trapping in the State forests, in addition to the other provisions of law applicable to hunting and trapping on the lands of this State, as the ~~Director~~ *Commissioner* may deem proper; but no such restriction or condition shall be effective as to any person to whom a permit is issued as provided in this article unless such restriction or condition be written, printed, stamped or otherwise indicated on the permit.

§ 10-71. Issuance of permits and collection of fees; form of permit.—The several clerks or other persons authorized to sell hunting and trapping permits of the circuit courts of the counties wherein such State forests are located shall issue such permits and collect the fees charged therefor. Each permit shall bear a serial number and shall be in such form as the ~~Director~~ *Commissioner* shall prescribe. All necessary permits or permit blanks shall be furnished to the clerks or other person authorized to sell permits by the ~~Director~~ *Commissioner*. For his services each such clerk or other person aforementioned shall be entitled to receive ten cents for each such permit issued by him.

§ 10-72. Each such clerk or other authorized person above mentioned shall pay into the State treasury the gross amount received by him from the sale of such permits, as follows: (1) for July, August and September, quarterly, not later than October fifth; (2) for October, November and December, quarterly, not later than January fifth; (3) for January, February and March, quarterly, not later than April fifth; and (4) for April, May and June, quarterly, not later than July fifth.

At the time of making each such remittance the clerk or other authorized person shall make a report to the ~~Director~~ *Commissioner* on forms prescribed and provided by him, whereon he shall show the serial numbers and quantity of permit forms received, sold, and on hand unsold, and the amount of gross collections remitted for the quarter. A duplicate copy of the report shall be forwarded, together with the remittance, to the Comptroller

§ 10-73. All funds paid into the State treasury, as provided in the preceding section, shall be credited to the ~~Department~~ *Division of Natural*

Resources and maintained in a special account to be expended annually, in the following order:

(1) One-fourth of the gross revenue so derived shall be paid into the treasuries of the several counties wherein such State forests are located proportionately according to the revenue derived from the sale of such special permits in each respective county, which shall be credited to the general fund of such county;

(2) From the balance remaining after providing for such payments to such counties, there shall be paid the costs of preparing and issuing the permits, including the compensation of the clerks or other persons authorized to sell hunting and trapping permits;

(3) The remainder may be expended by the ~~Director~~ *Commissioner* for game and forest management in such State forests. All funds expended by the ~~Director~~ *Commissioner* in the development, management, and protection of the game resources in such State forests shall be ~~in co operation with and under the direction of the Commission~~ *in accordance with of Game and Inland Fisheries Board policy.*

All moneys paid into such special account are hereby appropriated to the ~~Department~~ *Division of Natural Resources* for the purpose hereinabove set forth. All disbursements therefrom shall be made by the State Treasurer on warrants of the Comptroller issued upon vouchers signed by the State Forester or by such other person or persons as may be designated for the purpose by him or by the ~~Director~~ *Commissioner.*

§ 10-74. Punishment for violations.—Any person who shall hunt or trap on any of the lands described in § 10-68 in violation of any provision of this article, or in violation of such restrictions and conditions as may be imposed by the Board of the ~~Director~~ *Commissioner* pursuant to the provisions of § 10-70 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished accordingly.

§ 10-85. State Forester; appointment and qualifications. ~~There shall be a head and chief executive officer of the Division who shall be called the State Forester and who shall be a technically trained forester~~ *Within the Division of Natural Resources there shall be a Bureau of Forestry, headed by a State Forester who shall be a technically trained forester and shall have both a practical and theoretical knowledge of forestry. He shall be appointed by the ~~Director~~ Commissioner of Conservation and Development.*

§ 10-86.1. General powers and duties of State Forester.—The State Forester shall exercise such of the powers and perform such of the duties, in relation to forests and forestry, which are conferred or imposed upon the ~~Director of Conservation and Development~~ *Commissioner* by the provisions of this title, including powers and duties that involve the exercise of discretion, as may be delegated to him by the ~~Director~~ *Commissioner*, and 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.

§ 10-87. Additional powers and duties.—The State Forester shall under the ~~Director~~ *Commissioner*, have the supervision and direction of all forest interests and of all matters pertaining to forestry within the State. He shall have charge of all forest wardens who may be appointed by the ~~Director~~ *Commissioner*, and the appointment, direction, and superintendent of the persons and laborers whom the ~~Director~~ *Commissioner* may deem it necessary to employ to perform labor in the forest reservations or the nurseries herein provided for. He shall take such action as is authorized by law to prevent and extinguish forest fires; enforce all laws pertaining to forest and woodlands; prosecute any violation of such laws; collect information relative to forest destruction and conditions; direct the protection and improvement of all forest reservations; cooperate with land-

owners as provided in § 10-88; and, as far as his duties as State Forester will permit, carry on an educational course on Forestry at the University of Virginia, for credit toward a degree, at farmer's institutes and similar meetings within the State. He shall also recommend to the ~~Director~~ *Commissioner* and prepare for his use plans for improving the State system of forest protection, management and replacement, and prepare for the ~~Director~~ *Commissioner*, annually, and also whenever required so to do by the ~~Director~~ *Commissioner*, a report on the progress and conditions of State forest work.

§ 10-88. Cooperation in plans for protection, etc., of trees; how expenses paid.—The State Forester shall, whenever he may be directed so to do by the ~~Director~~ *Commissioner*, cooperate with counties, municipalities, corporations and individuals in preparing plans for the protection, management and replacement of trees, wood lots and timber tracts under an agreement that the parties obtaining such assistance shall pay the field and traveling expenses of the person employed in preparing such plans.

§ 10-90.1. Advisory Committee on Forestry.—The Governor may appoint an Advisory Committee on Forestry, to consist of five members who shall serve at the pleasure of the Governor for terms coincident with the term of the Governor.

Such Committee shall act in a capacity advisory to the ~~Director of Conservation and Development and the Board of Conservation and Development~~ *Commissioner and the Board* on questions and problems relating to forests and forestry.

When requested by the ~~Director~~ *Commissioner* or the Board so to do, the Committee shall investigate such questions and consider such problems, so relating, as may be submitted, and shall report ~~their~~ *its* findings and conclusions. The Committee may also make recommendations to the ~~Director~~ *Commissioner* and to the Board, of its own initiative.

The members of the Committee shall receive no salaries but shall be paid their necessary traveling and other expenses incurred in attendance upon meetings, or while otherwise engaged in the discharge of their duties, and shall be paid the sum of ten dollars a day for each day or portion thereof upon which they are engaged in the performance of their duties.

§ 10-90.2. Purpose and intent of article.—The purpose of this article is to place within the Department of ~~Conservation and Development, Division of Forest Service~~, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, devising and demonstrating control measures to interested landowners and others.

§ 10-90.3. Authority and responsibility for carrying out the purpose, intent and provisions of this article are hereby delegated to the Department of ~~Conservation and Development, Division of Forest Service~~. The administration of the provisions of this article shall be by the State Forester under the general supervision of the ~~Director~~ *Commissioner*. Authority for quarantine procedure now vested in the Department of Agriculture and Immigration shall remain in that Department.

§ 10-90.6. Appeals.—Any person damaged or aggrieved, *under the provisions of this chapter*, by any action of the State Forester or any other officer or employee of the Department, *subject to the requirements of §§ 10-17.58 through 10-17.64 regarding the Board review*, ~~under the provisions of this article~~ shall have the right to appeal to the circuit court of the county in which such person resides or in which he owns forest land affected by such action. The court, after hearing the evidence in the case, may make such orders as may be appropriate to protect the interests of the appellant, adjacent forest landowners, or the State.

§ 10-90.7. Cooperation with individuals and public agencies.—The

~~Department of Conservation and Development and the Division of Forest Service~~ ~~are~~ is authorized to cooperate with persons, counties, State agencies, and United States Government agencies, and the appropriate authorities of adjacent states concerning forest tree insect and disease investigation and control, and to accept money, gifts and donations and to disburse the same for the purpose of carrying out the provisions of this article.

§ 10-90.9. Control of Forest Tree Insects and Diseases Fund.—There is hereby created in the State treasury a special fund to be known as the Control of Forest Tree Insects and Diseases Fund. Such fund shall consist of all moneys appropriated thereto by the General Assembly, all revenues collected under the provisions of this article, and any moneys paid into the State treasury or to the State Forester or the Department of ~~Conservation and Development~~ by the federal government or any agency thereof to be used for the purposes of this article. All such funds are hereby appropriated to the Department of ~~Conservation and Development~~ to be used to carry out the purposes of this article.

§ 10-90.21. Administration of article. ~~The State Forester, under the supervision of the Director of the Department of Conservation and Economic Development~~ *The Commissioner*, shall administer the provisions of this article and is authorized to:

(1) *delegate said powers and duties herein to the Director of the Division of Natural Resources and the State Forester; and*

(2) employ personnel; purchase equipment, materials and supplies; maintain and transport equipment, and make other expenditures and payments authorized by law, and as directed by the rules and regulations adopted by the Board of ~~Conservation and Economic Development~~ for the administration of this article. In any one fiscal year, the expenditures for salaries of administrative supervisory personnel shall not exceed ten per centum of the general fund appropriation and taxes collected and deposited in the "Reforestation of Timberlands State Fund" as provided in § 10-90.27 for that particular fiscal year.

§ 10-90.22. Reforestation Advisory Committee; administrative rules and regulations.—The Governor shall appoint a Reforestation Advisory Committee, three of whom shall represent the pine pulpwood industry, three of whom shall represent the pine lumber industry, one of whom shall be the owner of an operating sawmill annually producing not more than five million board feet and three of whom shall be small forest landowners. The State Forester shall be an ex officio nonvoting member of the Committee, and shall serve as Secretary of the Committee.

From each of the above three-man categories, initially one member shall be appointed for a term of one year, one member for a term of two years, and one member for a term of three years. Thereafter all members shall be appointed for three-year terms. The sawmill owner shall be appointed for an initial term of three years. No person, except the State Forester who shall be a continuing ex officio member, shall serve for more than two consecutive terms.

The Committee shall annually elect a chairman and shall formulate rules for its organization and procedure.

The appointed members of the Committee shall receive no salaries but shall be paid their necessary expenses incurred in attendance on meetings or while otherwise engaged in the performance of their duties and shall be paid the sum of twenty-five dollars for each day or portion of a day upon which they are so engaged.

The Committee shall meet not less than twice each year, at such location as it may designate, for the purpose of formulating recommendations to the Board of ~~Conservation and Economic Development~~ concerning administrative rules, regulations and other matters applicable to this article

including, but not limited to, types of equipment to be purchased, rental rates for equipment, and reforestation practices.

The Board of Conservation and Economic Development may adopt the recommendations as submitted or as amended by the Board. The rules and regulations initially adopted, and as subsequently amended from time to time, by the Board of Conservation and Economic Development for administration of this article shall have the effect of law.

§ 10-90.26. Authority of State Forester Commissioner; reforestation options; lien.—The State Forester, under the supervision of the Director of the Department of Conservation and Economic Development Commissioner is authorized, upon the request of a landowner, to examine timberland and make recommendations concerning reforestation, and may make available to landowners, with or without charge, use of specialized State-owned equipment, and tree seedlings, tree seed, materials, and services of specialized State personnel for the purpose of preparing land for reforestation and reforesting land devoted to growing timber, in accordance with administrative rules and regulations adopted by the Board of Conservation and Economic Development.

Upon the completion of each separate reforestation project in accordance with the recommendations of and approved by the State Forester, the State Forester shall determine the total cost of the project including money paid or payable to a contractor or contractors for services performed on the project, for labor and for other costs incurred by the landowner, including a standard rental rate value for use of State-owned equipment and the cost of tree seedlings, tree seed, materials and specialized State personnel used on the project.

As an incentive to reforesting land, the State Forester may grant to the landowner from funds appropriated for the purposes of this article, one of the following options:

(1) The landowner may use available specialized State-owned equipment, tree seedlings, tree seed, materials and specialized State personnel for preparing and reforesting land, without charge to the extent of fifty percent of the total cost of the project as above computed, but not exceeding twenty dollars per acre.

(2) Whenever a landowner completes a reforestation project in accordance with the recommendations of and approved by the State Forester, through the use of his own equipment, material and personnel, or through the employment of a contractor or contractors where no State equipment, materials or personnel are used, or are used only in part, the State Forester shall determine the total cost of the project based on current commercial rental rate for machines similar to types used and cost of material and cost of personnel where the landowner does his own work on the project, or based on the contractor's or contractors' statement of cost or paid receipts furnished by the landowner where work is done by a contractor or contractors, together with and at the standard rental value for use of any State-owned specialized equipment, tree seedlings, tree seed, materials and specialized State personnel used on the project. The State Forester, from funds appropriated for the purposes of this article, may pay to the landowner an amount not to exceed fifty percent of the total cost of the project, as above determined, or twenty dollars per acre, whichever is the lesser.

(3) Whenever a landowner completes a reforestation project in accordance with the recommendations of and approved by the State Forester, through the use of his own equipment, seedlings, tree seed, material and personnel, or through the employment of a contractor or contractors, or use of available State-owned specialized equipment, and tree seedlings, tree seed, materials and specialized personnel, or any combination thereof, the State Forester shall determine the total cost of the project based upon the

statement of cost from the contractor or contractors or from paid receipts submitted by the landowner, together with the rental value for use of any State-owned specialized equipment, and tree seedlings, tree seed, materials and specialized personnel used on the project. The State Forester, from funds appropriated for the purpose of this article, may pay to the landowner an amount not to exceed seventy-five percent of the cost of the project or thirty dollars per acre of the project, whichever is lesser. There shall be a lien for thirty years upon the reforested land and the trees planted or seeded thereon for such sum. The landowner shall sign a lien agreement which contains a description of the property subject to the lien and a memorandum showing the landowner's name as the owner of the property sought to be charged and the State Forester as the claimant of the lien, the amount and consideration of his claim and the time when such lien expires, and such lien shall be filed in the clerk's office of the county or city in which such land and trees or any part thereof is situated. From the time such lien is docketed and indexed it shall be valid as to purchasers from and creditors of the landowner and may be enforced in a court of equity. The landowner shall pay any costs of preparing and filing such documents.

Timber may be cut from the land, either by clear cutting or by some form of thinning, at any time it has commercial sale value before the expiration of thirty years, but only after notifying the State Forester in writing, and before any timber is cut and sold from the land, the lien on the land shall be paid in full.

Should the landowner elect to cease growing timber on the land under lien, and use the land for some other purpose he may do so at any time, but only after notifying the State Forester of his intention, and the landowner shall pay the amount of the lien plus interest at the rate of five percent compounded annually dating from the initial date of the lien.

If the landowner fails to notify the State Forester before cutting timber or selling the land within thirty years after completion of the reforestation project, he shall be subject to a fine of five percent of the amount of the lien.

If the landowner cuts timber or elects to use the land for some other purpose within thirty years of the completion of the reforestation project and without paying the lien in full, such lien may be enforced against the property subject to the lien; but such lien shall be enforceable only if such conditions occur.

§ 10-90.27. Reforestation of Timberlands State Fund.—All moneys paid to or collected by the State Forester for rental of equipment, tree seedlings, seed and material furnished, and specialized personnel services rendered to a landowner and all moneys collected or received from settlement of liens, including principal, interest and fines, authorized under this article shall be paid into the State treasury. When so paid all such moneys shall be credited by the State Comptroller, as special revenues, to the "Reforestation of Timberlands State Fund" of the ~~Division of Forestry, Department of Conservation and Economic Development~~ for expenditure for reforesting the privately owned timberlands of the State as provided in this article. Such special revenues so deposited to the credit of said ~~Division of Forestry, Department of Conservation and Economic Development~~, shall be used for no other or different purpose. No portion of such special revenues shall revert to the General Fund of the State at the end of any fiscal year.

§ 10-91. State Geologist.—In the ~~Department~~ *Department's of Conservation and Development Division of Natural Resources* there shall be a ~~Division of Geology, of which there shall be a head and chief executive officer to be called the Bureau of Mineral Resources headed by the State Geologist.~~ The State Geologist shall be appointed by the ~~Director of Con-~~

~~ervation and Development Commissioner~~, shall be a geologist of established reputation, and shall receive such compensation as may be provided in accordance with law for the purpose.

§ 10-92. General Powers and duties of State Geologist.—The State Geologist shall exercise such of the powers and perform such of the duties, in relation to geology and geological matters, which are conferred or imposed upon the ~~Director of Conservation and Development Commissioner~~ by the provisions of this title, including powers and duties that involve the exercise of discretion, as may be delegated to him by the ~~Director Commissioner~~. The State Geologist may 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.

§ 10-92.1. Virginia Geological Survey.—The Virginia Geological Survey, established at the University of Virginia and formerly under the direction of the former Virginia Conservation Commission, is continued as a part of the ~~Division of Geology Department~~. The ~~Director Commissioner~~, shall have general charge of the Survey, and the State Geologist, under the ~~Director Commissioner~~, shall be immediately in charge thereof. The State Geologist may, with the approval of the ~~Director Commissioner~~, appoint such assistants and employees as may be necessary to enable him to carry on successfully and speedily the work of the Survey. Such assistants and employees shall receive such compensation as may be provided in accordance with law.

§ 10-93. Objects and duties of Survey.—The Survey shall have for its objects and duties the following:

(1) An examination of the geological formations of the State, with special reference to their economic products—namely, building stones, coals, ores, clays, soils, cement, materials suitable for use in the construction of roads, mineral and artesian waters, and other mineral substances.

(2) An examination of the road building materials and the best methods of utilizing the same.

(3) An examination and classification of the soils and study of their adaptability to particular crops.

(4) An examination of the streams and water powers of the State with special reference to their development for manufacturing enterprises.

(5) An examination of the water supplies of the State with special reference to the sinking of deep or artesian wells.

(6) An examination of the physical features of the State with reference to their practical bearing upon the occupation of the people.

(7) The preparation of special geological and economic maps to illustrate the resources of the State.

(8) The preparation of special reports, with necessary illustrations and maps, which shall embrace both a general and detailed description of the geology and natural resources of the State.

(9) The consideration of such other scientific and economic questions as in the judgment of the ~~Director Commissioner~~ shall be deemed of value to the people of the State.

(10) The ~~Director Commissioner~~ is authorized to arrange with the director or the representative of the United States Geological Survey in regard to cooperation between the United States Geological Survey and the Virginia Geological Survey in topographic, geologic and hydrographic work in such instances as may be deemed necessary and of advantage to the State; but in all cooperative work a sum of money shall be expended by the United States Geological Survey equivalent to that expended by the Virginia Geological Survey; and the ~~Director Commissioner~~ may accept or reject the work of the United States Geological Survey.

§ 10-94. Report to General Assembly.—The ~~Director Commissioner~~

shall cause to be prepared a report to the General Assembly before each meeting of the same, showing the progress and condition of the Survey, together with such other information as it may deem necessary and useful or as the General Assembly may require.

§ 10-95. Printing and distribution of regular and special reports.—The regular and special reports of the Survey, with proper illustrations and maps, shall be printed as the ~~Director~~ *Commissioner* may direct, and the reports shall be distributed by the Director as the interests of the State and of science may demand.

§ 10-96. Disposition of materials that have served purpose of Survey.—All materials collected, after having served the purpose of the Survey, shall be distributed by the ~~Director~~ *Commissioner* to the educational institutions of the State, in such manner as the Director may determine to be of the greatest advantage to the educational interests of the State.

§ 10-97. Advisory Committee on Geology.—The Governor may appoint an Advisory Committee on Geology, to consist of five members who shall serve at the pleasure of the Governor for terms coincident with the term of the Governor. Such Advisory Committee shall act in a capacity advisory to the ~~Director~~ *Commissioner* and the Board on questions and problems relating to geology and geological matters, and mineral resources. When requested by the ~~Director~~ *Commissioner* or the Board so to do, the Committee shall investigate such questions and consider such problems, so relating, as may be submitted, and shall report their findings and conclusions. The Committee may also make recommendations to the ~~Director~~ *Commissioner* and to the Board, on its own initiative.

The members of the Committee shall receive no salaries but shall be paid their necessary expenses incurred in attendance upon meetings or while otherwise engaged in the performance of their duties, and shall be paid the sum of ten dollars for each day or portion of a day upon which they are engaged in the performance of their duties.

§ 10-98. Drilling wells; notice to Commissioner; data required to be supplied.—If any person, company or corporation for any governmental, municipal, commercial, industrial, or institutional use or purposes shall himself or by agent excavate by the process of drilling any well for water, oil or gas, or make any exploratory excavation for or deepen or re-drill such a well he shall within thirty days after beginning operation give written notice thereof to the ~~Division of Geology~~ *Commissioner* and shall thereafter supply ~~it~~ *him* with such information as ~~it~~ *he* may from time to time require with respect to depths attained, shows, yield, pressure, water levels, drawdown and other technical or geological data. Such information shall be given on blank forms furnished by the ~~Division~~ *Commissioner* and shall be returned to ~~it~~ *him* within thirty days after receipt of the forms.

All wells drilled for water for domestic or farm use, all driven wells and all shallow wells not more than fifty feet in depth are exempted from the operation of this section.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction punished accordingly.

§ 10-100. Definitions.—As used in this chapter, the following words and terms shall have the following meanings:

(1) "*Board*" shall mean the Board of ~~Conservation and Economic Development~~ *Natural Resources*.

(2) "*Camping and recreational facilities*" shall mean and embrace camp sites, cabins, lodges, halls, tent camps, trailer camps, furnishings and equipment appurtenant thereto and useful in connection therewith including, but not limited to sanitary and utility services, restaurants, cafeterias, stables, horses and riding equipment, and shall also embrace bathing beaches, boathouses, boats, conference facilities, restaurants, sightseeing

facilities, sports facilities, and all incidental equipment appurtenant thereto, now under the control of the Department of Conservation, ~~and Economic~~ Development and Natural Resources or acquired, constructed, enlarged or improved under the provisions of this chapter.

(3) "*Cost of camping and recreational facilities*" shall include the purchase price, the cost of construction, enlargements or improvements, financing charges, interest during any period of disuse before completion of enlargements or improvements, cost of engineering studies and estimates and of engineering data, engineering and legal expenses, cost of plans, specifications, surveys, estimates of cost and of revenues, expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized.

(4) "*Department*" shall mean the Department of Conservation, ~~and Economic~~ Development and Natural Resources.

(5) "*Director*" "*Commissioner*" shall mean the ~~Director~~ Commissioner of Conservation, ~~and Economic~~ Development and Natural Resources.

§ 10-101. General powers of Commissioner and Board.—The ~~Director~~ Commissioner may be authorized by the Board, subject to the provisions of this chapter:

(1) To acquire, construct, enlarge, improve, operate and maintain camping and recreational facilities in any of the State parks under the control of the Department;

(2) To issue revenue bonds of the State to pay the cost of camping and recreational facilities and to pledge to the payment of the principal of and the interest on such revenue bonds all or any portion of the revenues to be derived from camping and recreational facilities then under the control of the Department and from camping and recreational facilities to be acquired or constructed from the proceeds of such revenue bonds, after first obtaining the consent of the Governor;

(3) To fix and collect fees and charges for the use of camping and recreational facilities;

(4) To receive and accept from any agency or instrumentality of the United States or other public or private body, contributions of either money or property or other things of value, to be held, used and applied for the purposes of this chapter;

(5) To make and enter into all contracts or agreements necessary or incidental to the execution of his powers under this chapter, and to employ engineering, architectural and construction experts, brokers and such other employees as he may deem necessary and fix their compensation in accordance with law.

The powers and duties of the ~~Director~~ Commissioner and of the Board hereinabove enumerated in this section shall not be construed as a limitation of their general powers or duties or in derogation of other powers now possessed by them and not in conflict with the provisions of this chapter.

§ 10-103. Revenue bonds.—(1) *Bond resolution; payment from special fund.*—The Board is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds of the State for the purpose of paying all or any part of the cost of camping and recreational facilities. The principal and interest of such bonds shall be payable solely from the special fund herein provided for such payment.

(2) *Date, rate of interest, maturity and medium of payment.*—Such bonds shall be dated, shall bear interest at such rate or rates not exceeding six per centum per annum, payable semiannually, shall mature at such time or times, not exceeding forty years from their date or dates, as may be determined by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds.

The principal and interest of such bonds may be made payable in any lawful medium.

(3) *Form and execution.*—The Board 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 thereof, which may be at any bank or trust company within or without the State. The bonds shall be signed by the ~~Director~~ Commissioner and sealed and attested by the Secretary of the Commonwealth, and any coupons attached thereto shall bear the facsimile signature of the ~~Director~~ Commissioner. In case any officer whose signature shall appear on the bonds or coupons shall cease to be such officer before delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

(4) *Negotiability; exemption from taxation.*—All revenue bonds issued under the provisions of this chapter shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. Such bonds and the income therefrom shall be exempt from all taxation, within the State.

(5) *Coupon or registered bonds.*—The bonds may be issued in coupon or in registered form, or both, as the Board may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest, and for the reconversion of any bonds registered as to both principal and interest into coupon bonds.

(6) *Sale of bonds.*—The ~~Director~~ Commissioner may sell such bonds in such manner, at private or public sale, and for such price as the Board may determine, or may authorize the ~~Director~~ Commissioner to determine, to be for the best interests of the State, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computations the amount of any premium to be paid on redemption of any bonds prior to maturity.

(7) *Use of proceeds.*—The proceeds of such bonds shall be used solely for the payment of the cost of camping and recreational facilities for which they are issued, and shall be disbursed by the ~~Director~~ Commissioner under such restrictions, if any, as the Board may provide.

(8) *Issuance of additional bonds.*—If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost of the camping and recreational facilities for the payment of which such bonds are issued, 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 the bonds or in the trust indenture hereinafter mentioned, 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 for such facilities.

(9) *Disposition of surplus.*—If the proceeds of any bonds issued to pay the cost of camping and recreational facilities shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of such bonds.

(10) *Temporary bonds.*—Prior to the preparation of definitive bonds, temporary bonds may be issued, under like restrictions, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(11) *Replacement of bonds.*—The Board may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(12) *Proceedings and conditions specified exclusive.*—Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this chapter.

§ 10-105. Trust indenture; provisions applicable to bond resolution.—In the discretion of the Board, each or any issue of revenue bonds may be secured by a trust indenture by and between the ~~Director~~ *Commissioner*, in the name of the Commonwealth of Virginia, Department of Conservation, ~~and~~ *Development and Natural Resources*, and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State. Such trust indenture may pledge fees and charges to be received from the use of and for the services rendered by any camp and recreational facilities, but no such trust indenture shall convey or mortgage any camping or recreational facilities or any part thereof.

Either the resolution providing for the issuance of revenue bonds or such trust indenture 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 Board and the ~~Director~~ *Commissioner* in relation to the acquisition, construction, improvement, and maintenance, operation, repair and insurance of such facilities, and the custody, safeguarding and application of all moneys, and may also provide that camping and recreational facilities shall be acquired, constructed, enlarged or improved, and paid for under the supervision and approval of consulting engineers employed or designated by the ~~Director~~ *Commissioner*, in the name of the Commonwealth of Virginia, Department of Conservation, ~~and~~ *Development and Natural Resources*, and satisfactory to the original purchasers of the bonds issued therefor, and may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues of the camping and recreational facilities or other moneys pertaining thereto be satisfactory to such purchasers. It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Such indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

In addition to the foregoing, such trust indenture may contain such other provisions as the Board may deem reasonable and proper for the security of the bondholders.

§ 10-106. Fees and charges.—The Board shall fix and revise, or authorize the ~~Director~~ *Commissioner* to fix and revise, from time to time as may be necessary fees and charges for the use of camping and recreational facilities the revenues of which shall have been pledged to pay the principal of and the interest on revenue bonds issued under the provisions of this chapter, and shall charge and collect the same. Such fees and charges shall be so fixed and adjusted in respect of the aggregate fees and charges for the camping and recreational facilities the revenues of which shall have been so pledged as to provide a fund sufficient to pay (1) the cost of maintaining, repairing and operating such facilities unless such cost shall otherwise be provided for, (2) such bonds and the interest thereon as the same shall become due and (3) reasonable reserves for such purposes. Such fees and charges shall not be subject to supervision or regulation by any other State commission, board, bureau or agency.

§ 10-108. Remedies of bondholders and trustee.—Any holder of revenue bonds issued under the provisions of this chapter or any of the

coupons attached thereto, and the trustee, under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this chapter, or by such resolution or trust indenture, to be performed by the Board or by the ~~Director~~ *Commissioner*, including the fixing, charging and collecting of fees and charges for the use of camping and recreational facilities.

§ 10-109. All moneys received to be trust funds; disbursements.—All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as tolls and revenues, shall be held and applied solely as provided in this chapter. The Board shall, in the resolution authorizing the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the tolls and revenues to be received into the State treasury and carried in the books of the Comptroller in a special account and may provide for the turning over, transfer or paying over of such funds from the State treasury to any officer, agency, bank or trust company, who shall act as trustee of such funds, and hold and apply the same to the purposes hereof, subject to such regulation as this chapter and such resolution or trust indenture may provide.

All moneys paid into the State treasury pursuant to the provisions of this chapter are hereby appropriated to the Department for the purpose of carrying out the provisions of this chapter. Disbursements and payments of moneys so paid into the State treasury shall be made by the State Treasurer upon warrants of the State Comptroller which he shall issue upon vouchers signed by the ~~Director~~ *Commissioner* or by such other person or persons as may be designated by the ~~Director~~ *Commissioner* for such purpose.

§ 10-127. Advisory Council on the Virginia Economy.—There shall be a council to be called the Advisory Council on the Virginia Economy which shall consist of forty-five members from the State at large appointed by the Governor and representing agriculture, industry and commerce. Appointments shall be made by the Governor for terms of three years except for the first appointees which shall be as follows: Fifteen for a term of one year, fifteen for a term of two years, and fifteen for a term of three years. Vacancies occurring on the Council shall be filled by Appointments by the Governor for the unexpired term and at the expiration of the terms, appointments will be made by the Governor for three year terms. No person shall be eligible to serve for more than two successive terms of three years. In addition the following State departments, commissions and bureaus shall be represented on the Council by their executive officers: Agriculture and Immigration, Conservation, and Development and Natural Resources, Education, Health, Highways, Labor and Industry, Unemployment Compensation, and the Virginia State Ports Authority. The Governor shall designate a chairman and a vice-chairman for the Council to serve during his term of office.

CHAPTER 1.1

§ 28.1-36.1. *The following words, for the purposes of this title, shall have the following meanings:*

(a) *“Department” means Department of Conservation, Development and Natural Resources.*

(b) *“Commissioner” means Commissioner of the Department.*

(c) *“Division” means Division of Marine Resources within the De-*

partment.

(d) "Director" means Director of the Division.

(e) "Board" means the Marine Resources Board.

(f) "Fish," "fishes," or "shellfish" shall be construed to include porpoise, fishes, oysters, clams, scallops, mollusca, crustaceans, terrapins, marine mammals and all other seafood.

(g) "Fishing" or "fisheries" shall be construed to include all operations involved in using, setting, taking, catching, or operating apparatus employed in killing, taking or catching the same, or in transporting and preparing the same for market.

(h) "Marine fish," "shellfish" and "organisms" shall be those species which spend the major portion of their lives in marine or estuarine waters (shad, herring, alewives and striped bass or rockfish are considered to be marine fish; sunfishes, crappies, catfish and carp are not).

(i) "Resident" shall be any person who has actually resided in Virginia for twelve months or a bistate agency created under a compact to which Virginia is a party; provided, however, that the powers and duties of the Potomac River Fisheries Commission shall not be extended hereby and such Commission shall have only those powers and duties set forth in the Potomac River Compact of 1958.

(j) "Shoals" shall be taken to mean water of less than four feet in depth at mean low water.

§ 28.1-36.2. Tidewater Virginia, as used in this title, is defined to embrace the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, Nansemond, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Southampton, Stafford, Surry, Sussex, Westmoreland and York; and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

§ 28.1-36.3. The Marine Resources Commission, formerly known as the Commission of Fisheries, and all offices created therein, are abolished. The powers and duties heretofore exercised by such Commission and by the officers thereof shall hereafter be vested in the Department of Conservation, Development and Natural Resources and shall be exercised by or as delegated by the Commissioner pursuant to the provisions of § 10-17.39, unless expressly designated to be exercised by the Marine Resources Board. The title to and control of all property and records of every kind and description formerly held or controlled by the Marine Resources Commission shall be vested in the Commonwealth of Virginia, Department of Conservation, Development and Natural Resources, and all personnel of said Commission shall be transferred to the Department.

§ 28.1-36.4. The jurisdiction of the Marine Resources Board shall extend to the fall line of all tidal rivers and streams and the Board shall have jurisdiction over all commercial fishing and all marine fish, marine shellfish, and marine organisms below said fall line on all tidal waters of the Commonwealth.

§ 28.1-36.4:1. The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision

of the Environmental Coordination Act of 1973 shall control.

§ 28.1-36.5. Any person who violates any regulation adopted and promulgated by the Marine Resources Board shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars or by confinement in jail for a period of not more than twelve months, or by both such fine and imprisonment in the discretion of the jury or the court trying the case without a jury.

CHAPTER 1.2

§ 28.1-36.6. The Board shall be under the duty and it shall have the authority:

(1) To establish by regulation such policies and standards as it deems necessary to promote the general welfare of the seafood industry and conserve and promote the seafood and marine resources of the State, including regulations as to the taking of seafood and to modify, amend or cancel any such standards or policies established.

(a) Such standards and policies or emergency standards and policies are to be adopted, modified, amended or cancelled in accordance with the General Administrative Agencies Act §§ 9-6.1 to 9-6.14, except that the notice of proposed standards and policies of general application shall be published at least once in daily papers published and having general circulation in Richmond, Norfolk and Newport News.

(b) Emergency policies and standards may be adopted for the immediate preservation of the public peace, health, safety, welfare, or protection of the seafood industry, natural resources or marine animals, but may not remain in effect longer than sixty days unless the laws relating to the adoption of nonemergency rules are fully complied with.

(2) To make rules for its own organization, and to have such other general and specific duties and powers as may be conferred upon it by law.

(3) To hear appeals as provided in §§ 10-17:58 through 10-17.64.

§ 28.1-36.7. It shall be the duty of the Commissioner and he shall have the authority:

(1) To exercise general supervision and control over the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the State, as provided in Title 28, and to administer and enforce the laws and regulations of the Commonwealth pursuant thereto, all certificates, licenses and rulings issued by him thereunder, and all standards and policies promulgated by the Board thereunder.

(2) To request the Virginia Institute of Marine Science to study and investigate any and all matters concerning the seafood industry, seafood and marine resources and to make reports and recommendations thereon and to make such studies of its own as may be necessary and make such reports and recommendations thereon as may be required. The Board may provide, within provisions of applicable law, such funds as are necessary to further these studies and investigations.

(3) To establish after Board approval a license commensurate with other licenses in an amount not to exceed one hundred dollars for any device used for the taking or catching of seafood in the waters of the State when such device is not otherwise licensed in this title, when such device is used for commercial purposes. All licenses issued by the Commissioner shall be on an annual basis and shall expire on December thirty-one of the year for which issued. Duplicate and triplicate licenses, vouchers and invoices may be destroyed after proper auditing.

(4) To adopt rules for the internal management of the Department.

(5) To appoint all officers and employees, including all inspectors and police boat captains, and to control all the employees of the Division. He shall employ such agencies and employees as the good of the service may in his opinion require, and all such employees shall be subject to his

orders.

(6) *To hear and determine all questions arising out of the official acts of these employees.*

(7) *To faithfully, impartially, and efficiently enforce all of the laws of this State relative to the fish and shellfish industry in the tidewaters of the Commonwealth, or under the jurisdiction or under the joint jurisdiction of the Commonwealth, and shall see that all laws relating to fish and shellfish are enforced and observed. He shall also see that the employees faithfully perform the duties prescribed for them by law, and observe such rules and regulations as he may lay down for their government.*

(8) *To purchase or rent such boats, nets, and other equipment as may be necessary to enable him and his assistants to perform the duties imposed on them by law; and to sell, exchange, charter, lease, rent, or repair any boats or other equipment belonging in the service; and in the case of sale or exchange, may reinvest the proceeds in another boat or boats, or equipment.*

(9) *To revoke, at his discretion, any license issued by him, after ten days' notice to the holder, for violation of any of the provisions referred to in § 28.1-37.7 (1).*

(10) *To establish and equip a permanent office for the Division at some convenient place in the city of Newport News. All records in the office shall be open at all times to the examination of the Governor, Auditor of Public Accounts, or their accredited agents, or any interested person. This office shall be kept open for transaction of business throughout each year, in conformity with the rules and regulations of the Commonwealth.*

(11) *To appoint a competent civil engineer and assistants thereto. It shall be the duty of such civil engineers to make, under the supervision of the Commissioner, a resurvey, where necessary, of the Baylor survey within the State, and to make surveys, where necessary, of all oyster-planting grounds heretofore leased or assigned by the State, together with such other surveys and resurveys of natural oyster rocks and shoals as may be deemed necessary and proper by the Commissioner.*

(12) *To appoint a conservation and repletion officer, who, at the direction of the Commissioner and taking due notice of the advice and recommendations of the Director of the Virginia Institute of Marine Science, shall be in charge of the oyster and shellfish repletion program, and have such other duties as the Commissioner shall prescribe.*

(13) *To render such staff and technical assistance to the Marine Resources Board as the Board may require in the performance of its duties.*

(14) *To make a biennial report to the Governor and to the General Assembly. In such reports the amounts of revenues derived from the fish and the shellfish industries under the supervision of the Department, and also the expenditures of the Department in regard to marine resources shall be plainly set forth. The condition of the fish and shellfish industries under the supervision of the Department shall be discussed, and such legislation as the Commissioner may think advisable for the betterment, protection, and conservation of such industries shall be recommended. The Commissioner shall make such other reports to the Governor as the Governor may direct. Recommendations to the Governor relative to legislation for the advancement of the fish and shellfish industries shall be transmitted by the Governor, together with his recommendations, to the General Assembly at its next succeeding session.*

§ 28.1-36.8. *The validity of any standards, policy, rule or regulation may be determined upon petition for a declaratory judgment thereon addressed to the Circuit Court of the City of Richmond by any person who might be adversely affected by its enforcement and who alleges that it is*

invalid. The Commissioner shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the Board to pass upon the validity of the rule in question. The court shall declare the standard, policy, rule or regulation invalid if it finds that it is unconstitutional, exceeds the statutory authority of the Board, or was adopted without compliance with the procedures prescribed in this chapter, or is unreasonable, arbitrary, capricious, and not in the public interest. An appeal may be had from the decision of the court to the Supreme Court as provided by law.

§ 28.1-36.9. (a) *Any person aggrieved by a final decision of the Commissioner subject to the requirements of §§ 10-17.58 through 10-17.64 regarding Board review, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under this chapter either in the Circuit Court of the City of Richmond, Corporation Court of the City of Newport News, or in any court of record having jurisdiction in the city or county in which is located his property affected by the decision complained of.*

(b) *Proceedings for review shall be instituted by filing a notice of appeal with the Commissioner within thirty days after the date of the order and giving a copy thereof to all other parties.*

(c) *With his notice of appeal, the appellant shall deliver to the Commissioner a transcript of the testimony if it was taken down in writing, or, if it was not taken down in writing, a statement of it in narrative form.*

(d) *Within thirty days thereafter, the Commissioner shall transmit to the clerk of the court to which the appeal is taken:*

(1) *A copy of the request, if any, for, or notice of, the formal hearing.*

(2) *A copy of the order appealed from.*

(3) *A copy of the notice of appeal.*

(4) *The transcript or statement of the testimony filed by appellant, together with a certificate that it is correct or that it is correct except in specified particulars.*

(5) *The exhibits.*

(e) *The failure of the Commissioner to transmit the record within the time allowed shall not prejudice the rights of the appellant. The court, on motion of the appellant, may issue a writ of certiorari requiring the agency to transmit the record on or before a certain date.*

(f) *The court, sitting without a jury, shall hear the appeal on the record transmitted by the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the court, in its discretion, may receive such other evidence as the ends of justice require.*

(g) *The court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the findings, conclusions or decisions are (1) in violation of constitutional provisions; or (2) in excess of statutory authority or jurisdiction of the agency; or (3) made upon unlawful procedure; or (4) unsupported by the evidence on the record considered as a whole; or (5) arbitrary, capricious, or an abuse of discretion.*

(h) *The filing of a notice of appeal shall not operate to stay the enforcement of the order. The appellant, at any time after the filing of his notice of appeal, may apply to the court to which he has appealed for a stay. The application shall be on motion after notice to the Commissioner, and a stay pending the appeal shall be granted unless it appears to the court that immediate enforcement of the order is essential to the public health or safety. In the order granting a stay the court may make any provision required to serve the ends of justice, including the granting or*

continuing in effect of a license.

§ 28.1-36.10. *From the final decision of the court of record an appeal shall lie to the Supreme Court in the manner provided by law for appeals in civil cases.*

§ 28.1-36.11. *The return of any employee of the Department as to the posting of any notices required under this title or affecting any regulation of the Commission shall be conclusive evidence of the same.*

§ 28.1-36.12. *The Commissioner, after ten days' notice to any person having a license issued by him, may revoke such license for violation of any of the provisions of this title. A hearing shall be heard by the Commissioner and an appeal may be taken to the courts as provided in this chapter.*

§ 28.1-37. Inspection districts.—~~The Commission of Fisheries Commissioner~~ shall divide the territory over which ~~it~~ *the Department* has jurisdiction into districts and in doing so ~~it~~ *he* shall redistrict such territory with a view to reducing the number of inspection districts to the smallest number, commensurate with the efficient enforcement of the fish and shellfish laws of this State. This power shall be a continuing power and may be exercised at any time.

§ 28.1-39. Appointment of inspectors.—~~The Commission of Fisheries~~ shall appoint for each of such districts one or more inspectors.

§ 28.1-41. Training and qualifications of inspectors.—~~The Commission of Fisheries~~ shall establish a training program for all inspectors. After July first, nineteen hundred sixty-two, no new inspector may be appointed who is not a high school graduate or equivalent, or who has not satisfactorily passed an examination prepared by the Commissioner. No person shall hereafter be appointed as inspector who has not attained the age of eighteen years.

§ 28.1-42. Oath and bond.—Each inspector appointed by the Commissioner shall qualify before the circuit or corporation court of the county or city in which he resides, or in which his district may be, or before the clerk thereof in vacation, by taking the oaths prescribed by law and entering into a bond in a sum fixed by the Commissioner, with sufficient cash or corporate surety to be approved by such court or clerk, in the penalty not to exceed fifteen thousand dollars nor to be less than five hundred dollars; payable and conditioned as required by law, and the clerk of such court shall transmit a copy of the bond to the Commissioner within thirty days from its execution. The premium on every such bond shall be paid out of funds of the ~~Commission~~ *Department*.

§ 28.1-43. Collection of licenses, rentals, fines, etc.—~~The Commission~~ *Commissioner* may designate such trustworthy persons in the several districts to sell licenses, and collect rentals and other sums due ~~it~~, ~~as it~~ *he* deems circumstances require; and such persons shall be bonded in such sum as will protect the ~~Commission~~ *Department* from any loss. All provisions applicable to such sales and collections by inspectors shall apply to such officers and agents.

§ 28.1-45. Reports of collections; receipts and accounts.—Each inspector shall at such times as may be required of him, make a complete report to the Commissioner of collections during the preceding month from every source under his supervision, according to the forms furnished him by order of the ~~Commission~~ *Department*, accompanied by all revenues collected during the preceding calendar month. The inspector shall give receipts for all rents, taxes and other sums collected by him only upon such blank forms as may be furnished him by the ~~Commission~~ *Department*, and shall keep accounts of all such collections and records of all his official acts in books to be furnished him by the ~~Commission~~ *Department*, which books and records shall be and remain the property of the State, subject at all times to examination by the ~~Commission~~ *Department*, or

its agents or attorneys, and be delivered to such inspector's successor in office or to the ~~Commission~~ *Department*.

§ 28.1-46. Police fleet.—The police fleet shall consist of the various boats now operated by the ~~Commission of Fisheries~~ *former Marine Resources Commission*, with such additions or changes as the ~~Commission~~ *Department* may from time to time make, either in accordance with special enactment of the General Assembly or by reason of the general powers conferred upon it by law.

§ 28.1-46.1. The ~~Commission~~ *Department* is authorized and directed to take steps to implement an effective radio navigation system in the lower Chesapeake Bay and its tidal tributaries. As a preliminary step in establishing such a system on a permanent basis, the Commissioner is authorized to negotiate an appropriate lease or other agreements with such firm or firms as may be necessary. Such agreement, if made, shall provide for lease of transmission or base radio stations, and of radio navigational equipment for designated vessels of the ~~Commission~~ *Department* and of the Virginia Institute of Marine Science, and shall provide an option for purchase of such equipment.

The ~~Commission~~ *Department* is authorized to establish a schedule of fees and charges to be paid by users of the system who are not agencies of the State.

§ 28.1-46.2. The ~~Commission~~ *Department* shall apply to the Federal Communications Commission for, and make its best efforts to obtain, permanent assignment of radio frequencies necessary and appropriate for operation of such system.

§ 28.1-46.3. Plan for implementation of complete and permanent system.—The ~~Commission~~ *Department*, with the cooperation of the lessor or other contracting party and appropriate officials of the State of Maryland, shall develop a plan to implement a complete and permanent system of radio navigation for the protection and safety of pleasure boating and the commercial boating and seafood industries.

§ 28.1-48. License tax for fishing in tidal waters; register mark.—
(1) *Amount of tax; to whom paid.*—Every resident who shall apply for license to catch or take fish from the tidal waters of the Commonwealth, or the waters within the jurisdiction of the Commonwealth, shall pay to the inspector of such district a specific license tax, which shall be in lieu of all taxes levied upon such persons for taking and catching fish, or for selling the product thereof, as follows:

- (a) On each pound net six dollars;
- (b) (1) On each stake gill net of twelve hundred feet in length or under, with a fixed location, eight dollars;
- (2) On all other gill nets up to six hundred feet, five dollars; all such nets over six hundred feet and up to twelve hundred feet, six dollars and fifty cents;
- (c) On each thresh net, skirt net, slat traps, prop nets, trap net, or similar device, four dollars;
- (d) On each fyke net head, weir, or similar device, four dollars;
- (e) On each person taking or catching eels or otherwise fishing by a means commonly known as fish pots, six dollars and fifty cents. It shall be unlawful to set fish pots on the ocean side of Accomack and Northampton Counties. The ~~Commission~~ *Department* inspectors may confiscate any fish pots set in such area.
- (f) On each trotline, three dollars and fifty cents. It shall be unlawful to set a fish trotline on the ocean side of Accomack and Northampton Counties. The ~~Commission~~ *Department* inspectors may confiscate any fish trotline set in such area.
- (g) On each person using or operating a fish dip net, three dollars;
- (h) On each haul seine used for catching fish, under five hundred

yards in length, fifteen dollars; no person shall set a haul seine on Sunday in the Chesapeake Bay or its tributaries;

(i) On each haul seine used for catching fish, from five hundred yards in length to one thousand yards in length, forty-five dollars; no person shall set a haul seine on Sunday in the Chesapeake Bay or its tributaries;

(j) On each sturgeon gill net or trammel net, seven dollars and fifty cents;

(k) On each sturgeon sweep net or haul seine, thirty-eight dollars.

(2) *Licenses for other devices.*—The ~~Commission of Fisheries~~ *Commissioner* shall have the power to establish a license commensurate with other licenses in an amount not more than one hundred dollars for any device used for the taking or catching finfish, fish or shellfish in the waters of the Commonwealth, that is not mentioned in Title 28.1 of the Code. The ~~Commission~~ *Commissioner* shall have the authority to specify any restrictions or control over the device or the person operating the device they may deem advisable when issuing such a license.

(3) *Register mark and how displayed; length of seine.*—Inspectors issuing such licenses shall furnish to the person to whom such licenses are issued a number or register mark, to be placed by the fishermen on their boats or fixed fishing devices. Provided, however, that it shall be unlawful for any person, firm, or corporation to use, operate, set or cause to be used, operated, or set, any such drift, or haul seine exceeding in length one thousand yards. If the license be for a fixed fishing device, the holder of the license shall fasten such register mark or number securely to one of the offshore stakes of the fishing device, but such device may be moved at any time within the same inspection district during the season for which the license therefor has been secured with the approval in writing of the inspector without the payment of any additional license. If the license be for a haul seine, drift net, purse net or similar fishing device, the holder of such license shall fasten the register mark number securely at a conspicuous place on the starboard side of the boat used in fishing such device.

§ 28.1-60. Nonresidents generally.—(1) *Catching fish for oil or guano prohibited.*—No nonresident of this State shall take or catch any fish, in the waters of the Commonwealth, or in the waters under its joint jurisdiction, for the purpose of converting the same into oil, fish scrap, fish meal or guano, except as hereinafter provided; nor shall any nonresident be concerned or interested with any resident as partner or otherwise, except as a stockholder in a domestic corporation, in taking or catching fish in any of the waters of this State to be manufactured into oil, fish scrap, fish meal or guano, or in such manufacture, except as hereinafter provided.

(2) *Resident not to be interested.*—Nor shall any resident of this State be concerned or interested with any noaresident as partner or otherwise, except as stockholder in a domestic corporation, in taking or catching fish in any of the waters of this State to be manufactured into oil, fish scrap, fish meal or guano, or in such manufacture, except as hereinafter provided, or knowingly permit any nonresident to use his name for either purpose.

(3) *License for taking menhaden fish.*—A nonresident person, firm or corporation may take or catch the fish known as “menhaden,” within ~~the~~ a three-mile limit on the seacoast of Virginia, and east of a straight line drawn from Cape Charles Lighthouse to Cape Henry Lighthouse for the purpose of converting the same into oil, fish scrap, fish meal or guano between the last Monday of May and the first day of December of each year; provided such person, firm or corporation has applied for and obtained license to take and catch such fish within the above-defined area

and in accordance with the following requirements.

(4) *Application for license; affidavit required.*—Such nonresident person, firm or corporation shall apply to the ~~Commissioner of Fisheries Department~~ for such license, at the office of the Commissioner. ~~Before granting such license the Commissioner shall require the applicant applying for the same to disclose by written affidavit:~~

(a) The true name or names of the person, persons, firm or corporation owning the purse net, seine, vessel or watercraft, and all the apparatus thereunto belonging, for which the license is desired; and if it be a firm, the true names and addresses of all the members of such firm; and, if a corporation, the location of the principal office and the names and addresses of the officers thereof.

(b) The name of each and every vessel, steamer or other watercraft, and the port in which the same is registered, for which such license is desired.

(c) That during the period of the license the owners and all persons employed by them will not violate any of the laws of this State in regard to the taking and catching of fish in the waters thereof.

Should the Commissioner of Fisheries be fully satisfied that the statements set forth in the affidavit are true and bona fide he shall then grant a license to such applicant, upon the applicant's payment of the same license fee as set forth for residents in § 28.1-59; provided, that in the event a resident of Virginia would be required to pay higher license fees in the applicant's state, then such applicant shall be required to pay the same license fee in this State which a resident of Virginia would be required to pay in the applicant's state. Nothing in this section shall be construed to permit fishing west of the aforementioned straight line from Cape Charles Lighthouse to Cape Henry Lighthouse.

(5) *Service of process.*—Every such licensee shall by written power of attorney appoint the Secretary of the Commonwealth and his successors in office, its agent, upon whom shall be served all lawful process against or notice to, such licensee, and who shall be authorized to enter an appearance in his behalf. The service shall only be made upon the Secretary of the Commonwealth, or, in his absence, upon the person in charge of his office, and shall be made in duplicate. The provisions of § 8-47 shall not apply to process in any action, suit, or motion against such licensee to be served upon the Secretary of the Commonwealth. A copy of such power of attorney, duly certified and authenticated shall be filed with the Secretary of the Commonwealth, and copies thereof duly certified by him shall be received as evidence in all the courts of this State. No judgment shall be entered against the licensee until after the process has been served as set forth for at least ten days.

Whenever lawful process against, or notice to, any such nonresident person, firm or corporation shall be served as hereinabove provided for, the Secretary of the Commonwealth shall forthwith mail a copy of such process or notice to such nonresident person, firm or corporation. For the first process or notice to be so mailed, the Secretary of the Commonwealth shall collect two dollars and fifty cents, and for each additional process or notice to be so mailed the sum of fifty cents, which shall be paid by the plaintiff at the time of such service, and the same shall be recovered by him as a part of the taxable costs, if he prevails in the suit or action.

A judgment, decree or order of the court entered or made against any such nonresident person, firm or corporation shall be as valid and binding on such nonresident person, firm or corporation as if such nonresident person, firm or corporation had been a resident and served with process or notice therein.

(6) *Penalty for violation.*—Any person, firm or corporation violat-

ing any of the provisions of this section shall be guilty of a **misdemeanor**.

§ 28.1-61. Application for license for resident to catch fish for manufacture into fish meal, oil, etc.—(1) *General provisions*.—Every person, firm or corporation owning or holding by lease or charter a purse net, seine, or vessel of any description to be engaged in catching fish in any of the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, to be manufactured into fish meal, oil, or guano, or for any other purpose, shall make application to the Commissioner of Fisheries Department through the inspector for the district in which is located the factor where such are to be manufactured, or in which the applicant resides or has its principal office, for a license to take and catch fish within the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, for the purpose aforesaid.

(2) *Who shall make application*.—If it be a corporation applying for such license, the application shall be made by an officer or one of the directors of such corporation; if the applicant be a partnership, the application shall be made by a general partner thereof; if the applicant be a joint venture or other firm, by a member thereof; if the applicant be an individual, by such individual.

(3) *Form and contents of application*.—The application shall be in writing, shall be sworn to by the applicant before a notary public or other person authorized to administer oaths, and shall disclose:

(a) The true name or names of the persons, firm, or corporation owning the purse net, seine, or vessel, and all the apparatus thereunto belonging, together with the true name or names of any persons, firms, or corporations holding the same by lease or charter, for which such license is desired; and, if it be a firm, the true names of all the members of such firm; and, if it be a corporation, whether the same be a domestic or foreign corporation, and the location of the principal office thereof.

(b) That all such persons and firm members are, and have been for twelve months next preceding, bona fide residents of the State of Virginia.

(c) The name of each and every vessel, steamer, or other watercraft for which such license is desired.

(d) That the applicant will not be concerned or interested with any nonresident of this State, except as stockholders in domestic corporations, in taking or catching fish in the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, for the purpose of manufacturing the same into fish meal, oil, guano, or for any other purpose or in such manufacture.

(e) That the nets or vessels of any description thus to be employed and for which license is desired are not held by contract of hire, charter, or other agreement calling for their return at any subsequent time to any nonresident person, firm, or corporation.

(f) The place where the factory which is to manufacture the fish so taken and caught into fish meal, oil, or guano or for any other purpose, is located.

(g) That, during the period of this license, the applicant will not violate any of the laws of this State in regard to the taking and catching of fish in the waters thereof.

(4) *Application of section*.—The provisions of this section shall apply only to resident persons, firms, and corporations who, when duly licensed, shall have the right to take and catch fish for the purpose aforesaid in all the waters of this Commonwealth, or waters within its jurisdiction.

§ 28.1-62. Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority to inspectors; appeals from actions of inspectors.—Should the Commissioner of Fisheries be

satisfied that the disclosures required by § 28.1-61 have been duly made, and that the application conforms in other respects to the provisions of said section, and upon payment of the license tax specified in § 28.1-59 the ~~inspector through whom, or in whose district the application was made~~ Commissioner shall issue to the applicant a license for each of the purse nets, seines, vessels, steamers, or other watercraft specified in the application, which license shall state the name of the licensee and the name of the vessel, steamer, or other watercraft licensed.

If any vessel, steamer, or other watercraft so licensed becomes disabled for use during the period of such license, the licensee may, with the consent of the ~~Commissioner of Fisheries~~ Commissioner, hire or charter a vessel, steamer, or other craft belonging to a nonresident to take the place of the one so disabled for the unexpired period of such license; in which case the ~~inspector~~ Department shall transfer the license issued for the disabled vessel, steamer, or other craft to the one so hired or chartered without requiring any additional license therefor, for which transfer the fee shall be one dollar.

~~The Commissioner of Fisheries may delegate to the various inspectors so much or all of his authority under this section as he may deem expedient; provided, however, that~~ Any person, firm, or corporation aggrieved by any action of any inspector exercising ~~such~~ delegated authority *under this section* shall have the right to appeal to the Commissioner of Fisheries for a review and correction of the actions of such inspector. Such appeal may be made by mailing a statement of the inspector's action, together with the appellant's objections thereto and his grounds for such objections to the Commissioner of Fisheries at the *his* office of the ~~Commission of Fisheries~~ Fisheries. Upon receipt of such appeal, the Commissioner of Fisheries shall forthwith notify the oyster inspector involved, who shall, within three days, deliver to the Commissioner of Fisheries all papers in his possession concerning the subject matter of the appeal, together with a written statement of his actions in the premises and the grounds therefor. The Commissioner of ~~Fisheries~~ Fisheries shall issue his ruling granting, transferring, refusing, or refusing to transfer the license or licenses involved within ten days after the receipt by him of such appeal.

§ 28.1-63. Any person, firm, or corporation aggrieved by any action of the ~~Commissioner of Fisheries~~ taken under the provisions of § 28.1-62, *subject to the requirements of §§ 10-17.58 through 10-17.64*, shall have the right to petition the circuit court of the county, or the corporation court of the city, in which is located the factory where the fish were to be manufactured, or in which the applicant resides or has its principal office for a review and correction of the ruling of the Commissioner of ~~Fisheries~~ Fisheries as provided in Chapter 2 (~~§§28.1-23 et seq.~~) of this title.

§ 28.1-69. Fishing with trawl net within three-mile limit.—It shall not be lawful to catch fish within ~~the~~ a three-mile limit of the Virginia Atlantic shoreline with a trawl net or similar device. Provided, however, the ~~Commission of Fisheries~~ Commissioner may issue permits to trawl within said three-mile limit, in the waters north of Cape Charles to the Maryland line, during the months of June, July and August of each year.

§ 28.1-70. License fee.—A license to fish in the above area with a trawl net or similar device will be granted upon payment of a fee of thirty-seven dollars and fifty cents per annum for each boat so employed, and no part of this fee will be refunded should the area be closed at the order of the Commissioner of Fisheries.

§ 28.1-73. License plates or tags generally.—It shall be the duty of the ~~Commission of Fisheries~~ Department to provide metal license plates or tags when required by statute or regulation, of such design or designs, with such letters and/or figures stamped or painted thereon, as may be deemed necessary or proper by the ~~Commission~~

§ 28.1-74. Inspectors to distribute license plates or tags; duty to attach to boats, nets or other devices.—Such metal license plates or tags shall be furnished by the ~~Commission of Fisheries~~ *Department* to the various inspectors, who shall furnish the same to such licensee who is required by statute or regulation to attach and display such metal license plate or tag. If the license be for a haul seine or purse net, the licensee shall securely attach and display the metal license plate at a conspicuous place on the starboard side of the boat used in fishing such device. If the license be for a pound net, fyke net, gill net of any type, draft net or other similar device, for the taking of fish, the licensee shall securely attach and display the metal license plate on one of the offshore stakes or buoys of the fishing device. Each of the aforesaid nets set in the water shall be marked by a buoy or stake easily visible on the surface which shall display the metal license plate which was issued by the inspector. Any of the aforesaid nets in the water not identified in this manner may be seized by a duly authorized inspector to be held for any forthcoming legal proceeding.

§ 28.1-79. Removal of abandoned pole or stake; stakes as identification markers; revocation of licenses for failure to remove stakes.—Any person, firm or corporation fishing a pound net or any other type fishing device requiring the use of fixed poles or stakes, shall remove all such abandoned poles or stakes from the bottom of the water where located; provided that one pole or stake may be left standing at least four feet above mean high water at old stands as an identification marker.

Abandoned poles or stakes are considered to be such poles or stakes which are not used for fishing.

The ~~Commission~~ *Commissioner* may revoke any or all fishing licenses, issued to such person, firm or corporation, as set forth in § 28.1-36, if abandoned poles or stakes are not promptly removed. If any person, firm or corporation fails to remove such poles or stakes, he shall be guilty of a misdemeanor and punished as provided in § 18.1-9 of the Code of Virginia. The person, firm or corporation responsible for removal of such poles or stakes shall be the person, firm or corporation who held the last license for such fishing device.

§ 28.1-85. Opening and closing public rocks.—The ~~Commission or~~ *Commissioner* ~~with the approval of the Commission~~ may, whenever it or he deems it advisable so to do to protect or promote the growth of oysters, close and open any area or restrict the manner or method of taking oysters in any area of the natural, or public, rocks, grounds, or shoals for purposes of repletion and rehabilitation, and may establish seed beds and plant shells and other cultch thereon, or take any other restorative measures which ~~it or~~ he may deem best. Said area may be closed for an entire season, or part of season, or may be closed for so many days per week. Before any such area, notice of such closing shall be posted by the inspector or other officer in two or more public places in the district in which the area is located for at least five days, and in such event the area shall be buoyed or marked by signs by a uniform system of buoys or signs indicating that such area is closed and that oystering by any means is prohibited therein. Any area closed under the provisions of this section may be reopened at any time by the ~~Commission or~~ *Commissioner* ~~with the approval of the Commission~~, but any area which has been closed and reopened at a later time may be closed *again* by the ~~Commission or~~ *Commissioner* at any time without notice.

§ 28.1-85.1. "Clean cull" area.—In addition to the authority granted in § 28.1-85 and notwithstanding any other provisions of this title to the contrary, the ~~Commission~~ *Commissioner* shall have the authority to set aside the following public ground in the James River as a "clean cull" area:

Beginning at corner No. 1 of Public Ground No. 1, ~~Warwick County~~ *the city of Newport News* said corner No. 1 being west of Jail Point; thence, in a southwestwardly direction to a point designated as latitude 37° 04' 02" and longitude 76° 34' 08"; thence, in a northwestwardly direction to a point designated as latitude 37° 05' 07" and longitude 76° 35' 27"; thence, in a northeastwardly direction to a point on the Baylor line, said point designated as approximate latitude 37° 05' 26" and approximate longitude 76° 35' 03" on the Baylor line; thence in a southwestwardly direction along the Baylor line to corner No. 1 of Public Ground No. 1, ~~Warwick County~~ *the city of Newport News*, said corner No. 1 being the point of beginning.

The ~~Commission~~ *Commissioner* may close and open all of the aforesaid area and may exercise any or all of the authority granted or set forth in § 28.1-85.

The ~~Commission~~ *Commissioner* shall have the authority to specify how, when and where oysters from this area shall be culled and the size which may be harvested, and the ~~Commission~~ *Commissioner* may enforce any part of the provisions of § 28.1-124 *in this area*.

To protect or promote the rehabilitation, growth, production or sale of oysters, the ~~Commission~~ *Commissioner* shall have the authority to harvest during anytime of the year by tonging, if available, and if not, then by other means available, any oysters which may be available in the area known as Deep Water Shoals in the James River and transplant them within the James River wherever it deems it advisable when emergency conditions arise. The ~~Commission~~ *Commissioner* shall have the authority to authorize harvesting of marketable oysters or harvest and transplant seed oysters anytime during the year from any areas in the State where the ~~Commission~~ *Department* has planted seed or cultch thereon.

Any person violating any provisions of § 28.1-85 or this section, or any conditions or restrictions adopted by the ~~Commission~~ *Board or Commissioner* thereunder, shall be guilty of a misdemeanor.

§ 28.1-87. Record of oysters handled; tax.—All purchasers, planters, packers, importers of shucking stock or shippers shall keep an accurate and complete itemized daily record of oysters barrelled, packed, shucked or marketed by them in a book to be kept for that purpose, which book will also indicate the number of bushels of oysters, before shucking, which came from public grounds, from what general area thereof, from whom purchased and the number which came from private grounds and from whom purchased and the number which were imported including the name and address from whom purchased. This book shall at all times be open for inspection by the ~~Commissioner~~ *or any employee designated by him to inspect the same Department*; and a failure to keep such a record shall be unlawful and shall be punishable as hereinafter provided.

The purchasers, planters, packers, importers of shucking stock or shippers shall pay a tax, to be known as inspection tax, to the Commonwealth of Virginia, or to the person authorized to receive the same, of not more than one and one-half cents for each bushel of oysters taken, caught, imported, or purchased, or two cents per gallon of all shucked oysters, it being the intent and purpose of this section to impose a tax upon all oysters taken, caught, imported or purchased, except those which are to be replanted in the waters of the Commonwealth.

The tax shall be collected by the district inspector or police boat captain from the owner, master or operator of any boat or vessel, motor vehicle, or the purchaser, importer or shipper, regardless of whether he is a packer, planter or an individual working on public grounds, immediately when each boat, vessel or motor vehicle is loaded or arrives in the State when the oysters do not go to a shucking or packinghouse. If the oysters are going to a shucking or packinghouse located in the Commonwealth

of Virginia for their use, then the tax shall be collected from the shucking house or packer. If the tax has not previously been paid to an inspector, the tax shall be paid by such purchaser, packer, importer or shipper between the first and fifth day of each month immediately following that in which such oysters are shucked, barrelled, packed, shipped or marketed.

§ 28.1-90. Duty to inspect; collection of tax and receipt for same.—It shall be the duty of the inspector in whose district a cargo of oysters is to be loaded, or a police boat captain in the area, to inspect such oysters as they are loaded and to see that all measurements are a full measure of oysters as defined in § 28.1-136; and that they are properly culled; and when such oysters are loaded to collect the inspection tax, and/or the out-of-state tax, whichever one or more of these taxes will be due and payable to the Commonwealth. The inspector or police boat captain shall furnish the owner, master or operator of such boat, vessel or motor vehicle a receipt showing the date, the destination, the number of bushels and the amount of each tax paid. This receipt is to be carried in the possession of the master or operator of the boat, vessel or motor vehicle and must be exhibited when requested by any inspector or police boat captain, a copy of which receipt shall be sent to the office of the ~~Commissioner~~ of Fisheries Department.

On or before the fifth day of each month the inspector or police boat captain shall render a statement to the Commissioner, on blanks furnished by the ~~Commissioner~~ Department, showing the amounts collected, and from whom collected.

§ 28.1-92. Records of oysters taken from public rocks and reports to be made.—Upon request the ~~Commissioner~~ Commissioner shall issue to licensed oyster buyers in this State forms for use in reporting to the ~~Commissioner~~ Department. Except as provided in § 28.1-93, on or before the fifth day of each month the oyster buyer shall send to the ~~Commissioner~~ Department a complete report of all oysters purchased the preceding month on the form above described setting forth the total number of bushels of oysters taken from the public grounds, the general area from which taken, and the price paid together with all taxes collected by them as required by § 28.1-93; provided, however, the information provided herein shall be used only for the collection of taxes mentioned in this section and for information to the Virginia Institute of Marine Science.

§ 28.1-93. Tax on oysters taken from public rocks; reports of oysters taken from seed area of James River.—There is imposed upon all oysters taken from the public rocks, beds, or shoals the following replenishment tax: oysters selling for \$1.50 per bushel or less, 5 cents per bushel; excluding the seed area of the James River, oysters selling for \$1.50 per bushel or less which are caught or taken from any public grounds where the State has planted shells, 10 cents per bushel; oysters selling for \$1.51 through \$2.50 per bushel, 10 cents per bushel; oysters selling for \$2.51 through \$3.50 per bushel, 15 cents per bushel; oysters selling for \$3.51 through \$4.50 per bushel, 20 cents per bushel; oysters selling for \$4.51 through \$5.50 per bushel, 25 cents per bushel; oysters selling for \$5.51, or more per bushel, 30 cents per bushel.

The tax shall be collected by the oyster buyer from the person taking or catching said oysters from the public rocks, beds or shoals at the time said oysters are purchased. All buyers of oysters from the seed area of the James River shall file with the ~~Commissioner~~ Department the complete report as specified in § 28.1-92 and shall pay to the ~~Commissioner~~ Department the proper amount of taxes due and collected. Both the report and the taxes due shall be filed and paid to the ~~Commissioner~~ Department at the time they pass the inspection point located in the area and before leaving the area.

Except for oysters that are taken or caught from within the seed

area of the James River, any person taking or catching oysters which are taken or caught from any public grounds where the State has planted shells and which are to be planted or used by the taker or catcher and not sold to a buyer, shall file the same report as required of a buyer. Such person shall file the report and pay to an inspector the proper amount of taxes due before leaving the area where the oysters were taken or caught.

The permit or license of any person purchasing, buying or selling oysters taken or caught from public rocks, beds or grounds who fails to comply with the requirements of this section shall be subject to revocation by the ~~Commission~~ *Commissioner*.

§ 28.1-94. Public Oyster Rocks Replenishment Fund.—All oyster replenishment taxes collected by the ~~Commission of Fisheries Department~~ shall be credited and deposited to a special Public Oyster Rocks Replenishment Fund, to be used only for administration of the program, and for replenishment, planting, and replanting the public oyster rocks, beds and shoals of this State with seed oysters, oyster shells, or other material which will catch, support and grow oysters. These funds shall be withdrawn and expended for such purpose on the order of the ~~Commission of Fisheries~~ *Commissioner*.

§ 28.1-94.1. Authority of Commissioner to make certain contracts; funds received to be paid into Public Oyster Rock Replenishment Fund.—The ~~Commissioner with the approval of the Commission of Fisheries~~ is authorized to contract with any person, firm or corporation for the purpose of taking or dredging submerged oyster shells or any other subaqueous materials from the tidal waters of the Commonwealth, and shall have the authority to plant, use or sell such shells or other materials in whatever manner the ~~Commission~~ *he* deems to be in the best interests of the Commonwealth.

All funds received or collected under this section shall be paid into the State treasury to the credit of a fund to be known as the Special Public Oyster Rock Replenishment Fund for the purposes of such fund. Expenditures and disbursements from such fund shall be made by the State Treasurer on warrants of the Comptroller issued on vouchers signed by such person or persons as shall be so authorized and designated by the ~~Commission of Fisheries~~ *Commissioner*.

§ 28.1-95. Violations; recovery of taxes.—Any person who violates any provision of this article shall be guilty of a misdemeanor. Any person collecting taxes under this article and willfully failing to pay such taxes collected to the ~~Commission Department~~ when and as required by law shall be guilty of larceny of said tax money collected and punished as provided by law for the crime of larceny. The ~~Commission Department~~ may maintain an action at law against any person required to collect or collecting taxes and failing to pay them to the ~~Commission Department~~ for the sum so collected, or which should have been collected, plus interest, and a penalty of fifteen percent.

§ 28.1-96. Carrying oysters out of State, or buying for that purpose; permit required.—It shall be unlawful for any person, firm or corporation to carry, or attempt to carry, or to buy for the purpose of carrying out of this State, any oysters taken from the natural rocks, beds, or shoals in the waters of this Commonwealth until he has first obtained for each cargo a permit to do so from the inspector from whose district the cargo is to be taken, or from the captain of one of the police boats, and has paid to the inspector or police boat captain the required tax per bushel on the number of bushels in the cargo. Such permit shall be signed by the ~~Commissioner of Fisheries~~ and countersigned by the inspector or police boat captain; and it shall be the duty of the ~~Commission~~ *Commissioner* to grant such permit unless, after examination of the seed areas, it shall

ascertain that it will injure or deplete the seed areas to grant such permits, and that the supply of seed oysters is insufficient to meet the demand for seed oysters by planters in the State of Virginia, and provided that the ~~Commission~~ *Commissioner* shall have power to cease granting of such permits whenever it shall ascertain that the seed areas are becoming depleted, and that to continue to grant such permit would seriously injure the same.

§ 28.1-97. Permit to buy or carry seed oysters from certain grounds.—(1) *Permit required.*—It shall be unlawful for any person, without first having obtained a permit therefor, as hereinafter provided, to buy or carry oysters to be planted in this State, whose shells measure less than three inches in length, from the eastern side of Accomack and Northampton Counties, or from James River above the seed line, as heretofore established. Any person desiring to buy or carry such oysters, from such localities to be planted in this State, shall first obtain for each cargo a permit therefor from the inspector for the district wherein such cargo is loaded, or from an officer of a police boat, for each boat, vessel, or motor vehicle to be used, which permit shall state the name and tonnage (if registered in the customhouse), of the boat, vessel, or motor vehicle, or other conveyance, the name of the owner and master thereof, and to what place in this State it is intended to carry such oysters in such boat, vessel, or motor vehicle, and may be loaded under the supervision of the inspector, and in the order of the presentation of the permit to the inspector in the seed oyster district in which such boat, vessel, or motor vehicle or other conveyance is to obtain its cargo. Such permit shall further certify to the identity and residence of the person making application to buy or carry such oysters.

(2) *Oath required.*—Before such permit shall be granted, the owner, operator, or mate of such boat, vessel, or motor vehicle shall make oath before the inspector or officer of a police boat that the boat, vessel, or motor vehicle or other conveyance will not be used for the purpose of carrying seed oysters measuring less than the size aforesaid out of this State, and that he will not sell such oysters to any other person for the purpose of carrying the same out of the State. The oath so taken and subscribed, together with a memorandum of the permit issued, shall be returned by the inspector or officer of a police boat to the Commissioner, to be filed in this office.

(3) *Penalties for violations.*—If any person in charge of a boat, vessel, motor vehicle or other conveyance, obtain a permit to take seed oysters to some place in this State, and thereafter take said seed oysters to another place in this State, unless within twenty-four hours after taking said seed oysters he shall notify the ~~Commission~~ *Department* of the place in this State to which said seed oysters are to be taken or were taken, or if he take said seed oysters out of this State, shall be guilty of a misdemeanor. The owner or master of any boat, vessel, or motor vehicle or other conveyance found buying or carrying seed oysters from the place aforesaid to any point in this State without a permit therefor shall be guilty of a misdemeanor.

§ 28.1-98. Permit to carry oysters from certain grounds.—It shall be unlawful for any person who does not have a written permit from an inspector or from the Commissioner of Fisheries, at any time to carry public rocks oysters from the James River seed area, i.e., that area in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of James River to a line in a northeasterly direction across James River to the Newport News municipal water tank located on Warwick Boulevard between 59th Street and 60th Street in the city of Newport News.

§ 28.1-99. Taking seed oysters from the State.—Seed oysters, taken

from the public oyster rocks, beds and shoals of the Commonwealth, and planted in the waters of this Commonwealth, shall not be carried outside the State of Virginia for a period of twelve months from the time they were so taken and planted, without first having obtained written permission from the ~~Commission~~ *Commissioner*. Any person violating the provision of this section shall be guilty of a misdemeanor and punished as provided by law.

§ 28.1-100. Baylor survey; surveying and resurveying planting grounds and marking lines.—(1) *Surveys and reports as conclusive evidence.*—The survey or surveys of the natural oyster beds, rocks and shoals of the Commonwealth, made in pursuance of an act of the General Assembly of Virginia, entitled an act to protect the oyster industry of the Commonwealth, approved on the twenty-ninth day of February, eighteen hundred and ninety-two, and acts amendatory thereof, or supplemental thereto, shall until otherwise provided by law continue to be held in all respects to be the survey or surveys defining and determining the natural oyster beds, rocks and shoals of the Commonwealth; the surveys and reports filed in accordance with the acts aforesaid shall be construed in all the courts of the Commonwealth to be conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks and shoals lying within the waters of the counties wherein such reports and surveys are so filed, and further, that there are no natural oyster beds, rocks or shoals lying within the waters of the counties wherein such reports and surveys are filed other than those embraced in the surveys authorized by the acts aforesaid. The surveys of the natural oyster beds, rocks or shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low-water mark of said body of water, any surveys, plats, markers, or lines to the contrary notwithstanding.

(2) Resurvey on motion of ~~Commission~~ *Commissioner or Board* or on application of citizens.—The ~~Commission of Fisheries~~ *Commissioner* ~~may~~ shall, on the direction of the Board, select and appoint on such terms as may be agreed upon, any surveyor to survey or resurvey any oyster-planting grounds either in his own or any other county. *The Board shall thereupon and to reestablish and permanently mark* any line or lines of the Baylor survey of natural oyster rocks, which, in the judgment of the ~~Commission~~ *Board*, it may be necessary to define. *The Commissioner shall then permanently mark such lines.*

§ 28.1-101. Reestablishment, etc., of lines of Baylor survey; procedure; evidence of reestablished lines; sale of Baylor survey charts and plats.—The ~~Commission of Fisheries~~ *Board* may reestablish, relocate and remark all lines of the Baylor survey which cannot be otherwise relocated because of the loss or destruction of marks which formerly existed. In reestablishing any such lines of the Baylor survey the line surveyed by Fred E. Ruediger shall be followed wherever such line exists or was surveyed. Where no former line can be reestablished the ~~Commission~~ *Board* may establish a new line.

When such ground or grounds, line or lines shall have been reestablished and relocated, the same shall be taken and accepted as conclusive evidence in all courts of the Commonwealth that the grounds so ascertained to be natural oyster rocks, beds, or shoals are such; and that all grounds lying outside of such boundaries are grounds open to rental under the laws of this State. Plats shall be made under the direction of the ~~Commission~~ *Commissioner* showing the reestablishment of such lines, and shall be recorded in the appropriate clerk's office.

The ~~Commissioner of Fisheries~~ *Department* shall have available at all times copies of the Baylor survey charts and plats, to be offered for sale to the public in such manner as the Commissioner may determine and a fee of three dollars per copy shall be charged therefor.

§ 28.1-103. Placing permanent markers.—Whenever any surveys or resurveys of the public oyster rocks of the Commonwealth are made by or under the direction of the ~~Commission of Fisheries~~ *Commissioner*, prominent and permanent concrete markers shall be placed on the shores fixing the survey stations, and whenever possible prominent and permanent range markers shall be placed on the shores or lands, the cost of same to be paid by the ~~Commission~~ *Department*.

§ 28.1-104. Removal of oysters planted by mistake.—When, by any resurvey of oyster-planting ground or survey made to reestablish the lines of the State survey of natural oyster beds, rocks, or shoals, which shall hereafter be made under the direction of the ~~Commission of Fisheries~~ *Board or the Commissioner, as the case may be*, it shall appear that any holder, without his own default, and by mistake of any officer of the State has had assigned to him and included in the plat of his assignment any portion of the natural oyster beds, rocks or shoals, as defined by law, and such holder shall file a petition with the ~~Commission~~ *Department* for leave to remove such oysters or shells from such ground, and that without default of the holder and by mistake of an officer of the State there has been assigned to him and included in the plat of his assignment a portion of the natural oyster beds, rocks or shoals, as defined by law, then the ~~Commission~~ *Commissioner* may allow the holder a reasonable time, not exceeding two years, within which to remove such oysters, their increase and the shells therefrom.

§ 28.1-107. Maps to be filed; evidential value.—A copy of ~~all maps~~ *any map* of the bays, rivers ~~and~~ *or* creeks of this Commonwealth made by the ~~engineer of the Commission of Fisheries~~ *Department* and showing the location of oyster-planting grounds in these waters, shall be filed in the clerk's office of the county or city having jurisdiction over the respective underwater areas.

Any such map and the areas of the individual assignments of oyster-planting grounds platted thereon shall be evidence in all the courts of this Commonwealth of all the oyster-planting grounds leased by the State to private individuals at the time the survey and map were made.

§ 28.1-109. General oyster-planting grounds.—(1) *Grounds comprising.*—The residue of such waterfront in excess of what is already assigned or is reserved for the riparian owners, and the residue of the beds of the bays, rivers, creeks and shores of the sea other than those within the limits of navigation projects adopted and authorized by the Congress and those required for the disposal of materials dredged incident to the maintenance of such projects, and other than natural oyster beds, rocks or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters thereon, and may be leased by the ~~Commission~~ *Department* upon proper application therefor.

(2) *Eligible applicants; provisions of section incorporated in lease.*—Application for assignment of oyster-planting ground may be made by any resident of the State, or any county, municipality, or political subdivision of the State, or by any firm, or corporation chartered under the laws of this State for the purpose of oyster culture and the oyster business; provided that at least sixty percent of the stock of any such corporation must be wholly owned by residents of the State of Virginia. Provided further, that such firm or corporation employ only resident labor in planting, cultivating, selling and marketing the oysters grown on the ground or land so occupied, and provided its principal place of business for selling and marketing such oysters be maintained within this State; and the provisions of this section shall be incorporated in any lease of oyster ground to any such firm or corporation, and the violation thereof shall forfeit the lease.

(3) *Application for assignment.*—All applications for assignment of oyster-planting grounds shall be made in writing to the inspector of the district wherein the ground lies, in duplicate. Applications shall be given priority in the same order in which they are received by the inspector; the applications shall be signed by the inspector when he receives them showing time and date received and the method by which he received them. The application shall state as near as may be the number of acres applied for and definite location, with the name of one or more prominent points or objects adjacent to such ground. A duplicate copy of this application shall be immediately forwarded to the ~~office of the Commission of Fisheries~~ *Department* by the inspector. It shall be the duty of any resident, firm or corporation desiring to obtain a location for planting or propagating oysters to apply to the inspector of the district in which such land lies to have the location ascertained, designated, surveyed and assigned.

(4) *Posting of notice of applications.*—Notice of the application shall be posted by the inspector for not less than sixty days at the courthouse of the county or city in which the ground applied for lies, and in at least two or more prominent places in the vicinity of such ground.

(5) *Advertisement of application.*—No assignment shall be made of any piece of ground containing more than ten acres until notice of application has been published in the county or city wherein the ground lies; and if no newspaper be published in the county or city, then it shall be published once a week for at least four weeks in some newspaper having general circulation in the county within which the ground lies. This publication shall be done in addition to the posting of the notices as required in paragraph (4) above; however, said publication may be done within the same sixty-day period that the application is posted.

(6) *Survey and marking of ground.*—If a protest is not filed ~~in the Commission office~~ *with the Department* within sixty days after posting of the notice of application, the inspector shall request the ~~chief engineer of the Commission of Fisheries~~ *Commissioner* to designate a surveyor to survey the grounds and make a plat in duplicate of the same. The surveyor shall forward the plat of survey to the ~~office of the Commission of Fisheries~~ *to be approved by the engineer of the Commission Department for approval*. If no protest to the application or surveying of ground is made before the expiration of thirty days after the plat of survey is recorded in the ~~office of the Commission of Fisheries Department~~, the ground applied for shall be assigned by the inspector provided:

(a) That the application and assignment complies with all applicable provisions of law and if in the judgment of the ~~Commission of Fisheries Commissioner~~ it shall be wise to do so.

(b) All fees, costs, and the annual rental has been paid for the lease of said ground. The ground shall be marked at the expense of the applicant, at the time the survey is made, and at the direction of the surveyor, with suitable stakes or other such markers, as may be permitted and approved by the ~~Commission of Fisheries Commissioner~~; and such suitable stakes or markers shall be kept by the lessee in their proper places at all times during the continuance of such lease, so as to conform accurately to the survey. Should such stakes or other markers be removed, knocked down, or be carried away, the lessee shall replace them in their proper places; and if he fails to do so within thirty days after being notified by the inspector of the district in which the ground lies, the lessee shall have no claim against any person for trespassing on the ground in any manner.

(7) *Application, surveyor's fee and recording fee.*—Any applicant for oyster-planting ground or for riparian oyster ground shall pay an application fee of twenty-five dollars and in addition shall pay to the surveyor for his services sixty dollars for the first five acres or less; seventy dollars

for more than five, but less than ten acres; seventy-five dollars for ten, but less than twenty-five acres; eighty-five dollars for twenty-five acres, but less than thirty-five acres; ninety dollars for thirty-five but less than fifty acres; one hundred dollars for fifty, but less than seventy-five acres; one hundred twenty-five dollars for seventy-five, but less than one hundred acres; one hundred fifty dollars for one hundred, but less than two hundred acres; one hundred seventy-five dollars for two hundred acres and up to and including two hundred fifty acres; and in areas of the Chesapeake Bay of larger than two hundred fifty acres, the price shall be determined by the Commissioner on a cost basis, but in no event shall such price be less than one hundred seventy-five dollars; and for drawing plat of ground (original and one duplicate), four dollars per corner for each corner, up to and including four corners, and one dollar per corner for all additional corners over four. Before an assignment or transfer, the applicant shall pay such fees as are specified in § 14.1-112 for recording each assignment or transfer and plat in the clerk's office and like fees for recording each assignment or transfer and plat in the ~~Commission office~~ *Department*. The sum shall be paid to the inspector receiving the application. No ground shall be assigned until all the fees prescribed herein have been paid.

(8) *Restrictions on assigned acreage and applications.*—No assignment, except in Chesapeake Bay, shall exceed two hundred and fifty acres. No applicant, after having had as much as two hundred and fifty acres of oyster ground assigned to him, shall again make application for another assignment of oyster grounds within six months from the day his assignment was recorded and completed as the statutes hereinafter provide. If an assignment be not made within six months after the expiration of the notice required by statute to be posted for sixty days, such application shall, upon the expiration of six months, lapse and become null and void, unless an extension is allowed by the ~~Commission~~ *Commissioner*, of not more than ninety days; provided, however, that in cases where a protest has been filed with the ~~Commission~~ *Department* against the granting of an application, the application shall not lapse until the ~~Commission~~ *Department* has finally acted upon the application.

(9) *Restriction on acreage owned or operated.*—No person, firm or corporation shall own or operate more than three thousand acres of oyster grounds in the waters of this State other than the Chesapeake Bay; and should ground in excess of three thousand acres be acquired by original assignment to the assignee, or be assigned to him or them by a lawful holder of such oyster ground, or as heir or distributee, or by devise or bequest, he or they shall, nevertheless, have a right to lawfully hold the same for and during the period of one year and shall have a legal right to assign the same. Should no assignment be made within one year the oyster-planting ground so acquired, in excess of three thousand acres, shall revert to the Commonwealth of Virginia, and may be applied for by any person having a legal right to do so.

(10) *Application for planting ground in Chesapeake Bay; acreage allowed; annual rental.*—Application for planting ground in Chesapeake Bay in waters from fifteen feet or more in depth shall be made to the ~~Commission of Fisheries~~ *Department*, which shall have the right to accept or reject any such application as it may deem best for the public interests; and the number of acres to be assigned to any applicant shall not exceed five thousand acres, provided that such assignment shall not interfere with the established fishing rights. Any such application, surveying, and marking shall conform to the law pertaining to oyster-planting grounds. The annual rental per acre in the Chesapeake Bay, in waters from fifteen feet or more in depth, shall be such an amount per acre as the ~~Commission of Fisheries~~ *Department* may designate, but in no case shall

be less than seventy-five cents per annum per acre.

(11) *Payment of annual rental to inspector; penalty for default.*—Such an applicant shall pay to the inspector the annual rental for such ground at the rate of one dollar and fifty cents per acre or any fraction thereof, per annum, except as provided for the Chesapeake Bay, and for bathing ground; such rental to be due on the first of September of each year after the date of assignment; and if not paid on or before December fifth, a ten per centum penalty shall be added to the annual rental charge, and the inspector may proceed to levy for rental and penalty.

(12) *Duration of lease.*—Each assignment shall continue in force for a period of twenty years from the date of assignment, unless said assignment is terminated in one of the manners provided by law. At the end of the twenty-year period, the holder shall continue to hold the same and it shall continue a new and renewed assignment unless the holder notified the district inspector or the Commissioner, that said assignment is not to be renewed. The interest in such ground shall be construed as a chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he be a resident of this State. If the named beneficiary is not a resident he shall have twenty-four months after the date of death to transfer said lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall be vested in the personal representative, if there be one, who shall transfer the lease to a qualified holder within twenty-four months.

If there be no qualification on the renter's estate within one year of his death, the ~~Commission~~ Department may within one year thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter both resident and non-resident.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment with resident heirs having six months' priority as to reassignment.

(12a) [Repealed.]

(12b) *Requiring lessee or transferor to have ground surveyed and plat recorded; canceling lease for failure of lessee to have survey.*—If the ~~chief engineer and the Commission~~ Department should determine that in any past assignment of oyster ground or when there is any attempt to transfer oyster ground, that there has not been a survey and/or a recorded plat acceptable to the *former Marine Resources Commission, or to the Department*, and, in ~~their~~ its opinion, does not accurately describe the metes and bounds of the leased ground, the ~~Commission~~ Department shall require the lessee and/or the transferor to have the ground surveyed and the plat recorded.

If the lessee fails to order the survey or resurvey within six months after date of notification to the lessee or transferor, by certified mail, the ~~Commission~~ Department shall cancel the lease on its books and may accept applications therefor from the general public.

(12c) [Repealed.]

(13) *Possession gives no preference as to assignment.*—Any person, firm or corporation in possession of any oyster-planting ground which has not been assigned according to law shall have no preference as to having the same assigned to him, but such ground shall be open to the first applicant.

(14) *Recordation of plat.*—The plat and assignment, as soon as practicable after completion, and after such ground shall have been assigned to the applicant, shall be filed for record by the inspector in the office of the ~~Commission of Fisheries~~ Commissioner and in the office of the

clerk of the county or city by the ~~Commission~~ of Fisheries Department. The county or city clerk shall forthwith record the assignment and plat in a well-bound and substantial book, such recording to be indexed in the name of the assignee. The clerk of the court shall receive the said plat and assignment and record the same, and shall be paid by the ~~Commission~~ Department for his services a fee of six dollars for each assignment. After the same has been recorded, the assignee is entitled to withdraw the original from the clerk's office.

(15) *State guarantees rights of renter subject to right of fishing.*—To any person, after having complied with all requirements, as set forth in the statutes necessary to have ground assigned to him, the State will guarantee the absolute right to the renter to continue to use and occupy such ground for the terms of the lease, subject to: (a) subsection (12) of this section; (b) riparian rights; (c) the right of fishing in waters above the bottoms, provided that no person exercising such right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with such renter's rights or damages such bottoms, or the oysters planted thereon; and (d) established fishing stands, but only if said fishing stand license fee is timely received from the existing licensee of said fishing stand and no new applicant shall have priority over the said oyster lease. However, such fishing stand location, assigned prior to the lease of said oyster ground, is to be considered a vested interest, a chattel real, and is an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws.

(16) *Payment of rent by person who does not hold lease.*—In any case where the inspector has personal knowledge that the person in whose name the lease was made, is dead, or unknown, and there is no one actually claiming said property as an heir of the former lessee, and there is a person personally known to the inspector who has paid the rent on the ground for at least five years, the inspector shall notify the person paying said rent that the ground may be assigned to someone else, provided that the person paying the rent shall have thirty days priority in which to perfect his application.

(17) *Delinquent ground.*—Any ground or area which becomes delinquent shall be open and available to be leased, after the following conditions have been complied with:

(a) The ~~Commission~~ Department must have notified the person in writing on or about September first of that year of the amount of rent due. If the rent becomes delinquent, a second notice must be mailed by certified mail on or about June first of the following year.

(b) If the person holding the lease does not pay all rents and penalties due on or before June thirtieth of the following year the land may be assigned if there is a valid application; provided that if the holder of the lease is deceased said delinquent lands shall not be open for application until one year has transpired from the time of his death.

(c) If the ~~Commission~~ Department has posted a list of delinquent oyster ground in that county for thirty days at the courthouse and three public places in the district in which the ground is located.

(18) *Effect of proposal for navigation project.*—From and after the date on which the Commissioner of Fisheries receives information to the effect that with regard to a specified navigation improvement project, the Secretary of the Army has been authorized by congressional action to cause a survey to be made on any such project, the ~~Commission~~ Commissioner shall obtain the consent and approval of the Governor before leasing any public oyster-planting grounds which probably will be required for dredging operations or spoil disposal areas in connection with such project. If after the completion of the survey and a submission of the District Engineers' report thereon to the Chief of Engineers, United States

Army, the proposed navigation improvement project is not authorized, the affected ground will again become available for lease and assignment.

§ 28.1-110. Ground for clams.—All provisions in this title referring or relating to the leasing of oyster grounds shall also include the right of the ~~Commission~~ *Department* to lease grounds for the purpose of planting, growing, storing and harvesting clams. The ~~Commission~~ *Department* may use the same ~~application and assignment forms and~~ procedures for leasing ground for the purpose of producing clams as provided for leasing grounds for the purpose of producing oysters.

§ 28.1-111. Natural rocks, etc., not to be used or staked off.—It shall be unlawful for any person to stake in or use or continue to use or occupy for the purpose of propagating or planting oysters or shells on any natural oyster bed, rock, or shoal, as defined by law, or any bottom which has not been assigned to him according to law, or any public clamming or scalloping grounds which have been set aside as such. The inspector for that district or any other officer of the ~~Commission of Fisheries~~ *Department*, shall require any such person to remove all stakes, watchhouses, or other obstructions from the natural beds, rocks, or shoals or from any bottom which has not been assigned to him according to law; failure to remove such stakes or other obstructions within ten days of the notice in writing is received by said person shall constitute a separate and additional unlawful act and violation of this title of the Code of Virginia, and the stakes or other obstructions shall be removed by the inspector or other officer of the ~~Commission~~ *Department* at the cost of the person unlawfully placing or having placed said stakes or other obstructions.

§ 28.1-112. Transfer or assignment.—A person holding a valid existing lease of oyster-planting ground may transfer or assign all or any part of said lease to another under the following conditions and provisions:

(1) The transfer or assignment may be made only to a resident of the State of Virginia or firm or corporation authorized by the laws of this State to occupy and hold oyster-planting ground.

(2) The application for transfer or assignment shall be in the form prescribed by the ~~Commission~~ *Commissioner* and shall be filed with the inspector for the district in which said ground is located, which application shall be forwarded to the ~~engineering office of the~~ *Commission Department*.

(3) The ~~Commission or its chief engineer~~ *Commissioner* shall require a new survey if there is not a survey of the exact parcel or parcels of grounds to be transferred or assigned.

(4) The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees for same shall be the same as for surveys made by the ~~Commission~~ *Department*.

(5) The application shall be accompanied by the transfer fee of five dollars if said parcel or parcels are ten acres or less in area and ten dollars if said parcel or parcels are more than ten acres in area.

(6) The ~~engineering office of the~~ *Commission Department* shall return said application for transfer or assignment with any correction or new plat it may deem necessary, to the clerk of the court of the county or city in which the ground lies, and shall notify the applicant by mail that said transfer has been sent to said clerk.

(7) The transfer or assignment shall constitute a new lease of the tract or parcel assigned and of the remainder or balance, if any, of the ground remaining under the old lease.

(8) The clerk of said court shall record the transfer or assignment together with the new plat of survey, if any, in the clerk's office of the county or city wherein the ground is located after the cost of recording said transfer and plat is paid to the clerk by the person receiving said transfer or assignment. A copy of said transfer or assignment and plat

shall also be recorded at the ~~office of the Commission~~ *Department*.

§ 28.1-113. Refund of rent paid under mistake.—Whenever it is made to appear to the ~~Commission of Fisheries Commissioner~~ by satisfactory evidence, that any person has, under mistake of law or fact, paid to the Commonwealth any sum or sums of money, he then and there not being legally obligated to pay the same, the ~~Commission Commissioner~~ is of the opinion that justice so requires, may refund the same. All amounts refunded under this section shall be paid out of the then current appropriations made for the use of the ~~Commission~~ *Department*.

§ 28.1-114. Relief from rent.—The ~~Commission of Fisheries Commissioner~~ may forgive ground rent for oyster leases in any area declared a disaster area for oyster culture. A disaster area may be declared when any natural or man-made condition arises which precludes satisfactory culture of oysters in that area. Such declaration for an area shall be made by the ~~Commission of Fisheries Board~~ upon the advice of the Director of the Virginia Institute of Marine Science on or before the first day of July of each year, and ground rent due and payable in September following such declaration may be forgiven for the ensuing tax year and such relief may continue until the ~~Commission of Fisheries Board~~ with the approval of the Virginia Institute of Marine Science shall declare the area again productive.

§ 28.1-115. Condemnation of oyster bottoms and grounds.—The Department of Highways, and any county, city or town shall have the right by eminent domain, to acquire any right or interest, partial or complete, in and to any oyster bottoms, oyster-planting grounds or interest therein that it deems necessary for the purpose of such Department or county, city, or town, respectively. The procedure in such cases shall conform, mutatis mutandis, to the provisions of Article 5 (§ 33-57 et seq.) of Chapter 1 of Title 33 of the Code of 1950 relating to the exercise of the right of eminent domain by the State Department of Highways in acquiring lands for highway purposes.

~~The Department of Conservation and Economic Development shall have the same right of eminent domain against the same properties as outlined above, where the purpose of the condemnation is to provide for a navigational improvement benefiting an area of the State or the whole State and not limited to purposes of any particular county, city or town.~~

§ 28.1-116. Rights of owner to waters within lawful survey.—(a) If any creek, cove or inlet within the jurisdiction of this Commonwealth 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, 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; provided, however, that in the county of Mathews the owners or lawful occupants of land on both sides of any creek, cove or inlet, except Horn Harbor, Winter Harbor and Milford Haven, suitable for the planting of oysters, above the point where such creek, cove or inlet is one hundred yards in width, shall have the exclusive right to use such creek, cove or inlet for planting oysters therein, the right of the owners or occupants of land on the opposite sides of such creek, cove or inlet to extend to the middle of the channel, wherever that may be from time to time.

(b) The ~~Commission~~ *Department* shall, to the extent practicable, in leasing oyster planting ground in Winter Harbor give priority to those eligible applicants who were, before July one, nineteen hundred seventy-two, users of grounds in Winter Harbor, and who apply for assignment within ninety days of July one, nineteen hundred seventy-two.

§ 28.1-118.1. Bathing grounds; assignment; rental.—Any person desiring to obtain a location for bathing grounds shall apply to the inspector

of the district in which the grounds lie to have his location designated, surveyed and assigned for the purpose aforesaid, and for such ground shall pay an annual rental of seven dollars and fifty cents per acre. Any such application, surveying, assigning and marking shall conform to the law pertaining to oyster-planting grounds. Any license so granted shall be for bathing grounds for public or commercial use only.

Should any lessee of bathing ground have his ground or any portion thereof resurveyed or should he reassign any or all of the ground, such resurvey or reassignment shall not be construed to be a twenty-year renewal of his lease, or as a new assignment of such ground, but shall be deemed to be a continuation of the original assignment, subject to all the limitations and conditions under which such ground was originally assigned.

The lessee of any bathing ground, the rent of which is to be paid to the following September of any year, may abandon his holdings at any time without being liable for the payment of the rent for the following year, provided he notifies the inspector, deputy inspector or the ~~Commission~~ of ~~Fisheries~~ *Commissioner* in writing of his intention so to do before September first. Such notice, when received by the inspector or deputy inspector, shall be immediately forwarded by such inspector or deputy inspector to the office of the Commissioner.

§ 28.1-119.1. License for purchaser of oysters, clams, or crabs; fee; display; monthly reports.—Any person, firm, or corporation, purchasing from the catcher, oysters or clams caught from the public grounds of the State or the Potomac River, or crabs caught from the waters of the State or the Potomac River, shall: (1) for each place of business in the State purchase a license therefor and the license fee shall be twenty-five dollars; and (2) for each boat or motor vehicle used for buying or transporting in the State shall purchase a license therefor and the license fee shall be fifteen dollars.

The license plate issued by the ~~Commission~~ *Department* shall be affixed in a conspicuous place on the said place of business, boat or motor vehicle.

Any person, firm or corporation purchasing oysters under the license specified herein shall file monthly reports as required by § 28.1-92. Such reports shall be filed with the ~~Commission~~ *Department* each month regardless of whether oysters were purchased that month or not.

§ 28.1-120. Taking oysters or clams by hand or with tongs.—(1) *Application for license.*—Any resident of this State who shall be duly qualified and desires to take or catch oysters or clams from the waters of the Commonwealth, not leased for planting purposes, by hand or with ordinary or patent tongs, or any other instrument allowed by law other than a scrape or dredge, shall first apply to an inspector for a license.

(2) *License fees.*—The license fee for taking oysters shall be as follows:

(a) For each person taking or catching oysters by hand or with ordinary tongs, seven dollars and fifty cents.

(b) For each person taking or catching oysters with patent tongs, seventeen dollars.

(3) *Fee for taking clams.*—License fee for taking clams shall be as follows:

(a) For each person taking or catching clams by hand or with ordinary tongs, five dollars and twenty-five cents.

(b) For each person taking or catching clams with patent tongs, seventeen dollars.

The license for taking clams by tongs, ordinary or patent, shall entitle the holder thereof to take only clams from the public bottoms in the waters of the Commonwealth but not from public oyster rocks, beds and shoals or from leased oyster ground, and is not to be construed, in anywise, to permit or authorize the taking of oysters at any time.

(4) *Possessing oysters while taking clams.*—If any person shall have in his possession any oysters while taking or catching clams or scallops under the preceding subsection during the season in which it is unlawful to take or catch oysters from the natural rocks, beds or shoals, he shall be *prima facie* guilty of violating the law of taking or catching of oysters therefrom during the prohibited season.

(5) *Taking clams in certain areas.*—It shall be unlawful to take or catch clams at any time, or by any means, in Pocomoke Sound above a line drawn from Drum Bay Point, in the county of Accomack, and running a north-northwest course to the line between the states of Maryland and Virginia, except upon such grounds in those waters as may be set aside for public clamming or scalloping purposes by the ~~Commission of Fisheries~~ Board.

(6) *Restriction on size of clams.*—It shall be unlawful for any person to harvest or ship any clams smaller in size than the legal size fixed by the ~~Commission~~ Board.

(7) *Exhibition of license.*—Any person engaged in taking oysters or clams from public grounds shall have such license available for inspection and shall exhibit it whenever requested by an inspector. Failure to exhibit the license upon demand of any inspector shall be a misdemeanor and *prima facie* evidence that such person is working without a license; provided, however, that if such person exhibit a license issued prior to the time of his arrest to the inspector before the date of trial, the inspector shall request the court to dismiss the charge.

(8) *Oysters and clams for household use exempted.*—This section shall not apply to the taking or catching of oysters or clams for immediate household use but not for planting or for sale, provided that no one may take more than one bushel of oysters or two hundred fifty clams in any one day without having a license.

(9) *Violation of section.*—Any person violating the provisions of this section shall be guilty of a misdemeanor.

§ 28.1-121. Who deemed nonresident.—No person shall be deemed a resident of this State within the meaning of this chapter who is not a taxpayer in the State, and shall not have maintained his residence therein for one year and actually resided therein for the four months next preceding the time when he makes application for any privileges or licenses granted to residents under this chapter; or unless he be a bona fide purchaser of land in this State and has actually lived within this State for the four months next preceding the time when he makes application for any privileges or licenses granted to residents under this chapter; provided, no restriction as to residence in this section shall prevent any person from obtaining license when required for buying fish or shellfish, or for the shucking of oysters; provided, further, that in dredging or scraping private planting grounds on permission of the ~~Commissioner~~ Commissioner the restriction as to residence in this section shall not prohibit the having of nonresidents as crew for any boat used in the fish or shellfish industry, if such boat be owned wholly by a resident or residents of Virginia, and also has for its master a resident as defined in this chapter.

§ 28.1-124. Oysters to be culled as taken.—All oysters taken from any public natural rocks, beds, or shoals in the waters of this State shall be culled on their natural rocks, beds, or shoals as taken; and oysters whose shells measure less than three inches in length, except those oysters taken from Russ Rock and Little Carter's Rock, in the Rappahannock River, whose shells shall be not less than two and one-half inches in length, and all shells shall be included in such culling, and replaced upon such rocks, beds or shoals. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle the entire cargo shall be subject to cull under this section.

The ~~Commission~~ Board shall have the authority to reduce the size or length limitation of the oysters to be culled in any area except in the James River where ~~they~~ the Commissioner has ~~have~~ established seed beds pursuant to § 28.1-85 or whenever they deem it advisable or necessary to conserve, protect or promote the production of oysters.

All oysters shall be placed on the culling board as taken and culled by hand to the inside of the boat. All oysters and/or shells once passing from the culling board to the inside of the boat shall be subject to inspection according to the provisions of this section and when found to include oysters less than the size above prescribed and/or shells, the entire cargo shall be considered as not having been culled as taken, according to the provisions of this section.

When small oysters are adhering so closely to the shell of the marketable oysters as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it.

In the inspection of oysters under this section, the law-enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the pile of oysters. If as many as one four-quart measure of undersized unshucked oysters and/or shells are found per bushel inspected, it shall constitute a violation of this section. In the inspection of seed oysters taken from the James River seed area, or any other area designated as seed area by the ~~Marine Resources Commission~~ Board, if as many as one six-quart measure of shells are found per bushel inspected, it shall constitute a violation of this section.

It shall be unlawful to have more than one-half gallon of shucked oysters kept on board of a boat tonging on the public rocks.

Any violation of any provisions of this section shall constitute a misdemeanor. Any person charged with violating any provision of this section shall be required, by the officer making said charge, to scatter the entire cargo of oysters on the public rocks under the supervision of an inspector and at the expense of the person charged with the violation. Provided that in lieu of throwing said cargo overboard the person charged with said violation may post cash bond with the officer making the charge in an amount approximately equal to the value of the entire load as determined by the officer making the charge. The refusal to either dump the oysters overboard or post a cash bond shall constitute a distinct and separate offense from any other violation. A person who has posted a cash bond who is acquitted shall be refunded said cash bond; if found guilty said cash bond shall be forfeited and deposited to the credit of the special oyster replenishment fund.

If a cash bond is posted by the person charged, the person charged shall properly cull the entire cargo of oysters immediately after the inspector has found them to be in violation of this section and before they can be sold, planted or disposed of by the person charged or by any other person to prevent the marketing of illegal oysters and/or shells.

The aforesaid requirement to scatter the entire cargo of oysters on the public rocks shall only apply to a cargo of oysters taken by any catcher from the public oyster grounds and shall not apply to oysters which have been purchased by a buyer and in the buyer's possession.

§ 28.1-128. Where lawful to issue permits to dredge; carrying dredge or dredging equipment on boat.—It shall be unlawful for any person at any time to take and catch oysters with dredges and scrapes from any public rocks, beds, shoals in this State; provided, however, that the ~~Commission~~ Commissioner may authorize the use of dredges upon the public rocks, beds and shoals of Tangier Sound, to wit: Johnson's Rock, Thoroughfare Rock, Fox's Island Rock, John's Rock, Klondike Rock, and the California Rock, during the months of December, January and Feb-

ruary.

It shall be unlawful for any person to have on board a boat a dredge or equipment normally used for dredging, unless he has a permit to dredge, or a license to dredge, and has said license or permit available for inspection on board of said boat.

It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use, or going to or coming from the grounds on which the dredging is permitted or licensed to take place or to and from one dock to another dock for maintenance and repairs to such boat and/or equipment.

§ 28.1-132. Penalty.—If any person take or catch oysters with a dredge, or scrape, or instrument other than ordinary or patent oyster tongs, or by hand in any of the waters of the Commonwealth except as provided by law, or regulations of the ~~Commission Board~~, he shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the penitentiary not less than one year, and fined not less than one hundred nor more than one thousand dollars, either or both.

§ 28.1-134. Dredging or scraping on private ground.—(1) *When and by whom dredging allowed; permit required.*—It shall be lawful for any resident of this State holding under legal assignment oyster-planting ground of at least three acres in one tract or adjoining tracts and having paid the rent therefor, to dredge or scrape the same at any time, except on Sunday or at night; provided he obtain from the ~~Marine Resources Commission~~ ~~Commissioner~~ a permit for each boat which is used to dredge or scrape such specified private oyster ground. Such permit shall show the name of the lessee and the name or number of the boat, date of issue and date of expiration, which expiration date shall not be more than twelve months from date of issue and may be renewed for like periods from time to time; and provided, further, that the ~~Commission~~ ~~Commissioner~~ may after a hearing refuse to grant a permit or renew the same to dredge or scrape any oyster-planting ground unless it be proved that the holder thereof has planted seed oysters or shells thereon and is using said planting ground for the cultivation of oysters and may refuse to grant said permit if it appears to the satisfaction of the ~~Commission~~ ~~Commissioner~~ at said hearing that the holder of said ground is an habitual violator of the seafood laws; provided, further, that applicant for said permit shall have the right of appeal from any decision of the ~~Commission~~ ~~Commissioner~~ refusing to grant said permit as provided in Chapter 2 (§ 28.1-23 et seq.) of this title. The ~~Commission~~ ~~Department~~ shall receive one dollar for each such permit issued.

(2) *Dredging or dredging equipment on boat.*—It shall be unlawful for any person to have on board a boat, a dredge or equipment normally used for dredging, unless he has a permit to dredge, or a license to dredge and has said license or permit available for inspection on board of said boat.

It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use or going to or coming from the ground on which dredging is permitted, or licensed to take place, or to and from one dock to another dock for maintenance and repairs to such boat and/or equipment.

(3) *Marking grounds.*—No person shall have or enjoy the privilege hereinbefore granted of dredging or scraping his oyster-planting ground unless he shall have first properly designated and marked the oyster lines of his planting ground by placing prominent and fixed buoys or stakes thereon, such buoys or stakes to be so many inches in diameter and to

extend so far above water as the ~~Commission Board~~ or the Commissioner, may direct, and the same shall be kept up and maintained so as to distinctly mark the outer line or lines of such planting ground. In the event that any single line of the boundary of such planting ground shall exceed 300 feet in length it shall be marked with at least three or more stakes, with one stake at each end of such line and one or more stakes equally spaced along such line. In the event it appears to the inspector that such ground is not properly marked, he may forthwith suspend the dredging permit until such time as the ground is properly marked. The buoys shall be painted white, and shall have the initials of the person or firm whose property they are, placed upon them near the top, in black letters, of not less than five inches in length. If stakes are used there shall be a sign painted as prescribed for buoys attached to each corner stake.

(4) *Marking boats.*—Such initials shall also be placed upon each side of the prow of any boat or craft used or employed in dredging or scraping such planting ground.

§ 28.1-135. Revocation of license or permit to dredge.—The ~~Commission~~ Commissioner, after a hearing, on testimony of an officer of the ~~Commission~~ Department at such hearing that he has personally observed a person having dredging cable and/or dredging equipment overboard or in any way engaged in dredging in any area other than where a person holds a lawful permit or license to dredge, shall have the authority to revoke all permits and licenses held by said person to dredge on public and/or private grounds, and to refuse to issue any licenses or permits for such purposes for a period of one year. Before any hearing is held pursuant to this section there must be at least five days' notice given to the permit or license holder, by written notice served by an officer or by certified mail addressed to the permit or license holder at the address given on the permit or license.

§ 28.1-137. Theft of oysters, clams, shells, etc.—If any person take, steal or carry away, without permission of the owner, oysters, clams, bedded or planted, oysters deposited by any person making up a cargo for market, shells or seed planted for formation of oyster beds by the State or any person, firm, or corporation, he shall be deemed guilty of the larceny thereof.

After any person is convicted for any violation of taking oysters from public ground, the ~~Commission~~ Commissioner, without notice and hearing required by § 28.1-36, immediately shall revoke all existing licenses to take or catch finfish or shellfish, issued to such person. No new licenses shall be issued to such person for a minimum of one month or a maximum of two years after such conviction in the discretion of the ~~Commission~~ Commissioner.

§ 28.1-138. Converting shells into lime.—It shall be unlawful for any person to take or catch oysters or shells in any of the waters within the jurisdiction of this State for the purpose of converting the same into lime, unless and except said person has obtained permission from the ~~Commission~~ Department to convert said shells into lime.

§ 28.1-142. (1) Each shucker or packer of oysters shall sell to the ~~Commission~~ Department at the prevailing market price up to twenty per centum of the shells, unless said shells are planted in Virginia waters.

(2) On or before December first of each year, the ~~Commission~~ Department shall notify each shucker or packer whether it will purchase by June first following the shells so set aside. If such notice is not given, the shucker or packer may dispose of such shells as he sees fit.

§ 28.1-145. Leasing of certain bottoms in James River prohibited.—The ~~Commission of Fisheries~~ Department shall have no power to lease any

oyster bottom in the James River, above the James River Bridge *in Newport News* west of the *said* James River Bridge, not theretofore leased, and nothing herein contained shall apply to any renewal of existing leases.

§ 28.1-146. Dredging for oysters in James River.—It shall be unlawful for any person to dredge for oysters in the James River during the open season for taking oysters from the public rocks and shoals; provided, however, that the ~~Commission of Fisheries~~ *Commissioner* may grant a permit to applicants therefor to dredge in specified areas.

§ 28.1-147. Authority of Governor to authorize dredging of channel in navigable waters; special provisions applicable in James River between James River Bridge and Jamestown Island.—(a) To the extent that the approval, consent or authorization of the Commonwealth is necessary or expedient for any person, firm, corporation, association or government, or for any agency of any or all of the foregoing, or any combination thereof, to dredge a channel of any navigable stream, the bed of which is owned by the Commonwealth, for the purpose of deepening, widening or relocating such channel and making related improvements, the Governor is authorized on behalf of the Commonwealth to grant such approval, consent or authorization upon such terms and conditions as he deems appropriate after the receipt by him of advisory reports from *the Commissioner*, the Virginia Institute of Marine Science, ~~the State Water Control Board~~, ~~the Commission of Fisheries~~, ~~the Commission of Game and Inland Fisheries~~, ~~the Board of Conservation and Economic Development~~, the State Port Authority and the State Highway Commission;

(b) Provided, however, that such approval, consent or authorization to deepen, widen or relocate the present ship channel in the area of the James River between James River Bridge and Jamestown Island shall not be granted by the Governor until he has received advisory reports from the above-mentioned agencies and except with the consent of the General Assembly. Such advisory reports shall be made available to the Governor and the General Assembly by the above-mentioned agencies not later than December thirty-first, nineteen hundred and sixty-six. The Governor shall at the next succeeding regular session of the General Assembly, or next succeeding special session of the General Assembly called solely or partially for the purpose of considering the same, whichever first occurs, transmit his recommendations to the General Assembly. If the Governor recommends the deepening, widening or relocating of such ship channel, he shall in his recommendation request the consent of the General Assembly to such project. If each house of the General Assembly grants its consent, by recorded vote of its members present and voting on the question, the Governor shall be authorized to give the approval, consent or authorization of the Commonwealth to such dredging; provided, however, that if either house shall fail for any reason to vote upon the question of consent, by recorded vote of its members present and voting on the question, prior to the adjournment of the regular or special session at which the Governor's recommendation is received, such failure of either house to so vote shall be deemed to grant the consent of that house as if such house had expressly consented to such project. If either house shall expressly decline to grant its consent, by recorded vote of its members present and voting on the question, the Governor shall not be authorized to give the approval, consent or authorization of the Commonwealth to such dredging.

§ 28.1-149. Certain natural oyster rocks in Rappahannock River.—All of Russ Rock and Little Carter's Rock are declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use, in the same manner and to the same extent as if the same had been embraced within the original Baylor survey; and the Commissioner

~~of Fisheries~~ is hereby directed as soon as practicable to have such natural oyster rocks, beds and shoals properly and accurately surveyed and a plat of the survey recorded in the clerk's office of Richmond and Essex Counties. The expense of making such surveys and recording the plat to be paid by the Commissioner out of the general oyster funds of the State, and such natural oyster rocks, beds and shoals shall henceforth be exempt from assignment to any person.

§ 28.1-161. Dredging clams in polluted areas for replanting in public clamming grounds.—The Commissioner ~~of Fisheries~~ shall have authority to dredge clams or have the same dredged in polluted areas for the purpose of replanting the same in public clamming grounds which have been or which may thereafter be set aside.

§ 28.1-162. Public clamming or scalloping grounds.—Any ground in the waters of this Commonwealth not assigned to anyone for planting or bathing purposes may be, on application of twenty or more citizens to the oyster inspector of the district in which the land lies, laid off and designated as public clamming or scalloping grounds; or the ~~Commission of Fisheries Board~~ may *by regulation* do so without such petition if in its judgment it is expedient, provided in its opinion no oyster interests will suffer thereby and the clams or scallops are of sufficient quantity for a person to realize at least two hundred and twenty-five clams or one and one-half dollars per day catching and taking clams or scallops from such ground; and, if laid off, the ~~Commission~~ Department shall have the metes and bounds of such ground accurately designated by proper and suitable stakes; and also have a plat made of the same, to be recorded in the clerk's office of the county wherein the ground lies, all cost of surveying, platting and recording to be paid by the applicants; and such ground shall be set apart and remain as public clamming or scalloping ground for the common use of the citizens of this State so long as the ~~Commission Board~~ may deem best, and shall not be assigned to anyone during such period.

§ 28.1-163. Catching of scallops; public scallop grounds.—(1) *Season for catching scallops.*—It shall be lawful for any person, who has been duly licensed according to law, to take or catch scallops with scrapes, from the public grounds of the Commonwealth, to take and catch scallops, by any means from such grounds between the fifteenth day of November of each year and the fifteenth day of April of the succeeding year, inclusive; but it shall be unlawful to take or catch scallops by any means whatsoever between the fifteenth day of April and the fifteenth day of November of any year.

(2) *License tax.*—For the privilege of taking scallops, there shall be paid to the inspector of the district in which he resides a license tax of two dollars and fifty cents per year, which shall include the privileges of marketing and shipping scallops so taken or caught.

(3) *Measuring ring; size limit.*—The inspector shall furnish each such licensee with a metal ring, having an inside measurement of one and three-quarter inches; and it shall be unlawful for any person to take, catch, or have in his possession scallops of a size smaller than one and three-quarter inches, which will pass through such metal ring.

(4) *Public scallop grounds.*—Any ground in the waters of this Commonwealth not assigned to anyone for planting or bathing purposes, may, on application of twenty or more citizens to the inspector of the district in which the land lies, be laid off and designated as public scallop grounds; or the ~~Commission of Fisheries Board~~ may *by regulation* do so without such petition if in its judgment it is expedient; provided, in the opinion of the ~~Commission Board~~ no oyster interest will suffer thereby, and the scallops are of sufficient quantity for a person to realize at least

three dollars per day catching and taking scallops from such grounds; and, if laid off, the ~~Commission of Fisheries~~ *Department* shall have the metes and bounds of such ground accurately designated by proper and suitable stakes, and also have a plat made of same, to be recorded in the clerk's office of the county wherein the ground lies, all costs of surveying, platting and recording to be paid by the applicants; and such grounds shall be set apart and remain as public scallop grounds for the common use of the citizens of this State so long as the ~~Commission~~ *Board* may deem best, and shall not be assigned to anyone during such period. Provided, however, that any person who has procured an oyster and/or clamming license shall have the privilege of taking and catching scallops under such license.

§ 28.1-165. Licenses to take crabs; amount of tax; restrictions on privilege.—Any resident of this State desiring to take or catch crabs for market or profit from the waters of this Commonwealth, or waters under its jurisdiction, by any of the means hereinafter stated, or any person desiring to engage in the business of buying or marketing crabs for packing or canning the same in any way, shall pay to the inspector of the district in which he resides the taxes and be subject to the provisions set forth in the other sections of this article and the following subsections:

(1) For each person taking or catching crabs by dip nets, net, ordinary trotline, hand rake, or hand scrape, pushed or pulled, or with any device other than hand line, three dollars and seventy-five cents; provided that no boat shall be used to pull or push any rake or scrape except as provided for in subsections (4) to (8) of this section.

(2) For each person taking or catching crabs with patent trotlines, fifteen dollars and seventy-five cents.

(3) For each boat operator catching blue crabs by means of a device made of wire or thread net and commonly known as a crab pot, fifteen dollars; or if catching crabs with one or more assistants twenty-five dollars; but no such pot or device shall be used which has a mesh less than one and one-half inches. A holder of a crab pot license may use peeler pots, exempt from mesh size limitations, without securing additional license. A peeler pot is defined as a wire mesh pot baited with only live adult male (jimmy) blue crabs. Provided, however, that during the months of June, July and August any person fifteen years of age or under may be an assistant to a boat operator catching blue crabs by means of a device made of wire or thread net without obtaining a license.

(4) For boat used for the purpose of taking or catching hard crabs with power-lifted scrapes or dredges, thirty dollars; but such boat shall not be used as a boat for buying crabs, when the ~~Commission~~ *Board* limits the taking of crabs under § 28.1-168.

(6) (c) No person who is licensed to catch crabs shall be required to procure further license for marketing or shipping his own catch.

(7) For each crab trap or crab pound, three dollars.

(8) For scraping crabs with a hand scrape, eight dollars and twenty-five cents.

§ 28.1-166. Use of scrapes or dredges.—No scrapes or dredges shall be used for catching crabs between the first day of April and the first day of December of any year; provided that the ~~Commission of Fisheries~~ *Board*, when in its judgment it is deemed advisable on account of weather conditions and not contrary to the public interest to do so, may open any season on the sixteenth day of November and it may likewise extend any season to the sixteenth day of April; nor shall scrapes or dredges be used at any time of the year in any of the rivers, or their estuaries, inlets, or creeks for the purpose of taking crabs except on the ocean side of Accomack and Northampton Counties. This section shall not apply to the taking or catch-

ing of soft crabs or the crab known as the "peeler" crab.

§ 28.1-168. Limiting the taking of crabs by one boat in one day.—Whenever, in the discretion of the ~~Commission Board~~, the interest of conservation and/or the crabbing industry so require, the ~~Commission Board~~ may limit the taking or catching of crabs by any one boat in any one day. Such regulation, upon becoming effective, shall have the full force and effect of law and violation thereof is hereby declared to be a misdemeanor.

Possession of crabs in excess of the amount provided by such regulation shall be prima facie evidence of violation; provided, however, that the provisions of this section shall not apply to crab buy boats.

§ 28.1-173.2. Identification of crab pots.—Any person, corporation or association owning or using a crab pot or pots, for whom a license is prescribed in this title, shall display and maintain his or its current license number, issued by the ~~Marine Resources Commission Department~~, on the float or stake attached to each such crab pot, in a legible and visible manner and in figures of not less than one inch in height. The identification of the owner of such crab pot by virtue of the license number above described shall not give rise to any liability on its owner for its location so long as the crab pot is placed in the waters of this State in compliance with the laws thereof.

§ 28.1-175. Examination, analysis and inspection of fish, shellfish, growing areas, packinghouses, etc.—For the purpose of protecting the fish and shellfish industries of the State, as well as the public health of the country, and preventing the sale of fish and shellfish which are deemed unfit for market, the State Health Commissioner is hereby directed in his discretion, or at the request of the Governor or the ~~Commission Board~~ or ~~Commissioner of Fisheries~~ *Commissioner*, to make an examination or analysis of the fish and shellfish, whether on the planting grounds, in packinghouse, or in any other place or places in this State, from which such fish and shellfish are to be taken or sold for food purposes. The Health Commissioner in making such examination may make an analysis of the seawater and bottom sediment in and adjacent to the shellfish growing areas, for evidence of pollution, in making such examination and analysis, the Health Commissioner or his designated agents or employees shall use the acceptable scientific methods. The Health Commissioner may also make a survey of the sanitary conditions and pollution hazards adjacent to shellfish growing areas, both in the water and on shore.

And the Health Commissioner in making such examination of oyster packinghouses or other places so designated shall examine the packinghouses and plants wherein fish and shellfish are handled and the sanitary conditions surrounding the packinghouse and plant. The Health Commissioner, when making an examination of the packinghouses and plants, may or may not make an analysis of the fish and shellfish in the packinghouse or plant at the time the inspection or examination is made.

§ 28.1-176. Polluted ground or shellfish.—When the State Health Commissioner determines, as a result of an examination, analysis or inspection, made pursuant to this chapter, that the shellfish upon such ground, or in such packinghouses, or fish or crab meat in packinghouses or other places where they are sold, or offered for sale as in the preceding section (§ 28.1-175) described, are unfit for market; or that such shellfish growing area is polluted or has a pollution hazard so great as to render it an unfit ground upon which to take oysters from for processing or consumption; or that such packinghouse or other place is so insanitary as to render it an unfit place in which to prepare fish, shellfish or crab meat for market, the State Health Commissioner shall notify the ~~Commissioner of Fisheries~~, and owner/or operator of such grounds, packinghouse, or other place of such fact.

Upon receipt of such notice, the owner or operator of such grounds,

packinghouse, or other place, shall cease to take shellfish from such ground, except as is hereinafter provided, and shall cease to prepare for market, or to sell, or offer for sale, or to dispose of in any manner, fish, shellfish or crab meat in such packinghouses or other places, as herein mentioned, until the cause for such notice shall have been removed or relieved to the satisfaction of the Health Commissioner.

And the Health Commissioner may establish, alter and change, in his discretion, at any time, standards, examinations, analysis and inspections which shall control the taking and marketing from a health standpoint, of fish, shellfish, and crab meat; and he shall be the sole judge as to whether or not such fish, shellfish and crab meat are sanitary and fit for market and also of such standards, examinations, analysis and inspection.

§ 28.1-177. Condemnation of polluted growing area.—When from examination of or analysis of the shellfish growing area, or the bottom in or adjacent to such area, or the water over such area, or the sanitary or pollution conditions adjacent to or in near proximity to a shellfish growing area, the State Health Commissioner determines that the shellfish growing in such area is unfit for market, he shall, after notifying the Commissioner of Fisheries, cause limits or boundaries of such area upon which such shellfish are located or planted to be fixed, which area shall be condemned, and remain so until such time as the Health Commissioner shall find such shellfish or area sanitary and not polluted. The ~~Commission of Fisheries~~ *Department*, with instructions from the State Health Department, shall erect markers or signs designating condemned areas. The necessary markers or signs shall be supplied to the ~~Commission of Fisheries~~ *Department* by the State Health Department.

A shellfish growing area and the shellfish located thereon may be condemned for the following periods:

(1) Condemned for an indefinite period, which shall remain in effect until some major improvement in pollution abatement occur on the stream in question.

(2) Seasonably [seasonally] condemned area where recreation or certain other activities in or adjacent to the area may cause pollution of the growing area during certain seasons of the year.

(3) Conditionally condemned areas which are sanitary and open under normal conditions, but which because of potential pollution hazards may be closed by the Health Commissioner at any time without advance notice or a prior hearing, provided that relative to said area there must be a hearing within thirty days after the area is condemned, unless it is reopened within said period. Areas not condemned as stated in this and the above two numbered paragraphs are in effect approved.

§ 28.1-179. Removal, transportation, etc., from polluted ground.

(1) No person, firm or corporation shall take, catch, transport, sell, offer for sale, remove, receive, keep or store shellfish from condemned areas, or relay shellfish taken from such areas, until a special permit has been obtained from the ~~Commission~~ *Department*, which must be carried in his possession when engaged in such operation.

Before any person, firm or corporation shall take or remove shellfish from private grounds in condemned areas he shall have written authority in his possession from the owner or lessee in addition to obtaining the permit as herein required.

No permit for transporting or relaying shall be issued to any person, firm or corporation for the purpose of buying and selling shellfish from condemned areas. Permits for transporting and relaying shall only be issued to persons, firms or corporations who catch shellfish from condemned areas and who want to move such shellfish to an approved area; and to those persons who buy shellfish from condemned areas from the catcher and who transport or relay the shellfish to their or other approved grounds.

No permits shall be issued to any motor vehicle transporting and/or relaying shellfish from condemned areas unless such motor vehicle has an enclosed body with doors which can be sealed by an inspector. An inspector shall have the authority to refuse to issue such a permit if he determines the motor vehicle cannot be properly sealed.

If shellfish from condemned areas is to be transported and/or relayed, at any time, by a motor vehicle an inspector shall seal the body of the motor vehicle before departure and the seal shall not be broken by anyone except an inspector at the point of final destination where the cargo is to be discharged for relaying and/or transplanting in an approved area. After the seal is broken an inspector shall supervise the relaying of the shellfish from the truck to the approved area.

Upon evidence of such permit holder offering for sale and not planting such shellfish from condemned areas, the Commissioner shall promptly revoke all permits held by such person, firm or corporation.

(2) Any person, firm or corporation holding a valid permit to remove, transport and/or relay shellfish from condemned area shall keep accurate records and submit monthly reports to the ~~Commission~~ *Department*, which shall designate the areas from which the shellfish were removed; the areas to which the shellfish were relayed; the dates of the removal, and/or relaying; the number of bushels of shellfish removed, and/or relayed; the name of the permit holder; the name and address of each person employed and engaged in the operation; the names or numbers of the boats; and the license numbers of the trucks used in the operation. During any month, covered by permit, in which no removal and/or relaying is in operation, a report shall be submitted to the ~~Commission~~ *Department*, indicating that no shellfish were removed and/or relayed. It shall be the responsibility of the permit holder to keep accurate records and make reports of the removal, and/or relaying, to the ~~main office of the Commission~~ *Department* on or before the tenth day of the month following the month of operation. The permit shall set out the expiration date thereof.

(3) Application for the special permit, provided for in subsection (1) of this section, before the removal, transportation and/or relaying of shellfish from condemned areas, shall be made on forms provided by the ~~Commission~~ *Department*. A fee of one dollar shall be paid to the ~~Commission~~ *Department* when such application for permit is filed. This permit shall not be transferable.

The special permit, after being issued, may be revoked at any time by the Commissioner, when, in his judgment, it will be to the best interest of the industry that the same be revoked. Any person having said permit revoked may demand a hearing before the ~~Commission at the next scheduled meeting of the Commission~~ *Department*.

(4) Shellfish removal, and/or relaying, from condemned areas shall be under the supervision of the ~~Marine Resources Commission~~ *Department* and the Department of Health.

(a) The season for the removal, and/or relaying, of shellfish from private grounds shall be from April first to November first.

(b) The season for the removal, and/or relaying of shellfish from public grounds shall be from May first to August fifteenth.

(c) The above dates for the opening and closing of said seasons may be changed by the ~~Commission Board~~, and the ~~Commission~~ *Department* may refuse to grant permits for removal of shellfish from any and all condemned areas of the waters of the State.

(5) Any conveyance engaged in transporting shellfish, which have been caught within condemned areas for the purpose of relaying to another area where they may be cleansed and made fit for market, shall display a yellow flag of not less than thirty inches in length and eighteen inches in width before any shellfish are placed thereon, and the flag shall be dis-

played during the entire relaying operation.

(6) It shall be the duty of the inspector of the ~~Marine Resources Commission~~ *Department*, and employees of the Department of Health, to examine the area to which shellfish from condemned areas are relayed and see that adequate and proper corner stakes or buoys have been put in place by the lessee before a permit shall be issued to transport to or plant the area. Each corner, stake or buoy shall be marked by a yellow flag or bunting of not less than fifteen inches by fifteen inches, and the marking shall remain until a special permit to remove the shellfish for sale or shipment has been obtained from the State Health Commissioner.

(7) No person, firm or corporation shall discharge, or cause to be discharged, any part or all of the shellfish from any conveyance engaged in transporting shellfish from condemned areas at any place other than to approved areas for cleansing, and shall move directly to the approved planting ground, or to conveyances holding a proper permit for relaying to cleansing areas designated in the permit.

(8) The loading and unloading, ashore, of shellfish taken from condemned areas shall only be at points designated by the ~~Commission~~ *Department with the approval of the Board*.

(9) Should the occasion arise for any emergency unloading of any conveyance engaged in transporting shellfish from a condemned area, the ~~Commission~~ *Department* shall be notified immediately and disposition of said cargo shall be made under the supervision of the ~~said Commission~~ *Department*.

(10) There shall be no transportation, relaying or any movement of shellfish from condemned areas after sunset or before sunrise except by motor vehicle properly sealed pursuant to subsection (1) hereof. Clean shellfish and shellfish from condemned areas shall not be mixed in any quantity in the same cargo.

(11) ~~The Marine Resources Commission, whenever they deem an emergency exists~~ *The Board, or the Commissioner with the approval of the Board, whenever it or he deems an emergency to exist,* may make rules and regulations to protect the health of the public, which relate to shellfish from condemned areas, without complying with the requirements of §§ ~~28.1-24 and 28.1-25.~~ § ~~28.1-36.6.~~ Such rules and regulations shall become effective ~~upon the passage by the Commission~~ *immediately*. These rules and regulations shall be enforced by revoking any and all permits which may have been issued.

§ 28.1-180. Who to enforce preceding sections; rules and regulations; duty of Commonwealth's attorney.—The State Health Commissioner and the ~~Commissioner of Fisheries~~ *Department* are hereby charged with the enforcement of the provisions of this chapter and for the purpose of carrying out their provisions, they may make uniform rules and regulations, and it shall be the duty of the attorney for the Commonwealth, to whom they or either of them shall report any violation of this chapter to cause proceedings to be commenced and prosecuted, without delay, for the fines and penalties in such cases provided.

§ 28.1-183. Powers of officers charged with enforcement.—For the purpose of carrying out the provisions of the six preceding sections (§§ 28.1-177 to 28.1-182), the State Health Commissioner and the ~~Commissioner of Fisheries~~ *of Conservation and Natural Resources*, and such agents or assistants of either of the Commissioners as are now or may be hereafter appointed may enter upon premises located in the State, or upon any boat, vessel, barge, car, motor vehicle, or other conveyance, wharf, packing or shucking house, store, stall or other place where oysters, clams, crab meat or scallops may be found, and if it appears that the provisions of such sections, or any of them, have been violated, may, with or without a warrant, arrest any person or persons who are or who

have been, or who are believed to be or have been, in charge of such oysters, clams, crab meat or scallops, and may seize, in the name of the Commonwealth, and take possession of such oysters, clams, crab meat or scallops, and may seize and take possession of any boat, vessel, barge, car, motor vehicle or other conveyance used in violation of the provisions of such sections, together with the cargo of any such boat, vessel, barge, car, motor vehicle or other conveyance, which may be held till the accused has paid the penalty for his offense, if upon trial he is found guilty, or has upon trial been acquitted, as the case may be. When any oysters, clams, crabs or scallops of an accused are seized pursuant to the provisions of this section, such may be destroyed at the discretion of the State Health Commissioner, the Commissioner, of Fisheries or their authorized agents or assistants, and if the accused is acquitted of the charges, he shall be recompensed the value thereof, based on the average selling price on the day of seizure.

§ 28.1-185. Arrest and seizure with or without warrant.—The Commissioner ~~or any members of the Commission of Fisheries~~, all inspectors, police captains of boats, and other employees designated by the Commissioner in the service, shall have the power, with or without warrant, to arrest any person or persons found violating any of the fish or shellfish laws, and to seize any vessel, boat, craft, motor vehicle conveyance or other thing used in violating any of such laws, together with the cargo of such vessel, boat, craft, motor vehicle conveyance or other thing.

Any property declared forfeited by any of the provisions of this title of the Code, the seizure and disposition whereof is not otherwise provided for, may be seized by a sheriff or any designated employee of the ~~Commission~~ Department under a warrant issued by a justice of the peace or of a court not of record.

§ 28.1-188. Pursuant and arrest of law violators who cross Maryland-Virginia line.—(a) It shall be lawful for any police officer of the Conservation Commission of Maryland, or other officer of such commission having policing powers and charged with the duty of enforcing the fish and shellfish laws of Maryland, along the Maryland-Virginia line in the Chesapeake Bay, while in the act of arresting or attempting to arrest a person or persons for an alleged violation of such laws, committed in his presence and for which he is attempting an immediate arrest, to pursue such person or persons across the State line of Virginia and to make such arrest in Virginia.

(b) The several police officers of the ~~Commission of Fisheries~~ Department of Conservation and Natural Resources of Virginia and any other officer or agent of the ~~Commission~~ Department, having policing powers and charged with the duty of enforcing the fish and shellfish laws of Virginia in the Chesapeake Bay along the Maryland-Virginia line, are hereby authorized and empowered to pursue any person or persons whom they are attempting to arrest for an alleged violation of the fish and shellfish laws of Virginia, committed in their presence and for which they are seeking an immediate arrest, across the State line into Maryland, if any such person or persons should flee across such line, to arrest such person or persons in Maryland and to return him or them to Virginia.

(c) This section shall not take effect unless and until the General Assembly of the State of Maryland shall have enacted concurrent legislation and the Governor of this Commonwealth shall have issued his proclamation as hereinafter provided; and if and when such concurrent legislation shall have been enacted by the General Assembly of the State of Maryland and provisions made whereby the same will become effective concurrently herewith, the Governor shall issue his proclamation declaring the provisions of this section effective.

§ 28.1-195. Virginia Institute of Marine Science continued; duties.—The Virginia Institute of Marine Science, hereafter referred to as Institute, heretofore operating as the Virginia Fisheries Laboratory, is continued and shall be an independent research and service agency subject to the affiliation hereinafter provided for.

It shall be the duty of the Institute:

(a) To conduct studies and investigations of all places of the seafood and commercial fishing and sport fishing industries;

(b) To consider means by which fisheries resources may be conserved, developed and replenished and to advise the ~~Commission of Fisheries Boards, Divisions and the Commissioner of the Department of Conservation, Development and Natural Resources~~ and other agencies and private groups on these matters;

(c) To conduct studies and investigations of problems pertaining to the other segments of the maritime economy;

(d) To conduct studies and investigations of marine pollution in cooperation with the ~~State Water Control Board~~ *other divisions of the Department* and the Department of Health and make the resulting data and possible corrective recommendations available to the appropriate agencies;

(e) To conduct hydrographic and biological studies of the Chesapeake Bay and the tributaries thereof and all the tidal waters of the Commonwealth and the contiguous waters of the Atlantic Ocean;

(f) To engage in research in the marine sciences and, with proper affiliation with one or more accredited institutions of higher learning, provide education therein;

(g) To make such special studies and investigations concerning the foregoing as it may be requested to do by the Governor.

The above studies shall include consideration of the seafood and other marine resources including the waters, bottoms, shore lines, tidal wetlands, beaches and all phenomena and problems related to marine waters and the means by which these marine resources might be conserved, developed and replenished.

§ 28.1-196. Use of services of other agencies; solicitation, etc., of funds; taking fish and other marine organisms.—In conducting its studies and investigations under the preceding section (§ 28.1-195) the Institute is authorized to obtain and make use of the services of any agency, public or private. The Institute is further authorized, with the prior written approval of the Governor and subject to any other provisions of law, to solicit, accept and make use of such funds as are made available from any source, public and private, for the purpose of furthering the studies and investigations and to work and cooperate with appropriate State agencies and with similar agencies and institutions in other states and the United States in conducting the work authorized hereby. The Institute, its officers, agents, employees, or persons operating under its direction may take or cause to be taken for scientific purposes, any fish or other marine organism at any time from the waters of Virginia, and with the consent of the ~~Commission of Fisheries Commissioner~~, may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for such purposes.

§ 28.1-197. Board of administration; personnel; application of personnel and appropriation acts.—The operation of the Institute, including selection of personnel, shall be by a board of administration consisting of the ~~Commissioner of Fisheries~~ *Director of the Division of Marine Resources*, ex officio, and eight other citizens of the State familiar with various phases of the seafood and other maritime segments appointed by the Governor, who shall appoint the chairman. A person holding some other State office may be appointed to the board. Insofar as possible

representation shall be given all branches of the seafood and maritime industries.

The terms of office of the members shall be as follows: four shall be appointed for terms of two years and four shall be appointed for terms of four years. Their successors shall be appointed for terms of four years. Vacancies occurring otherwise than by expiration of term shall be filled for the unexpired term. The first appointments hereunder shall begin July one, nineteen hundred sixty-two. No member appointed by the Governor shall be eligible to serve for more than two successive terms, provided that a member appointed to fill a vacancy shall be appointed for the unexpired term and may thereafter be appointed to serve two additional successive terms. The Director of the Institute shall be appointed by the members of the board of administration to serve at the pleasure of the board.

The members of the board shall receive no compensation for their services but appointive members shall be paid their necessary expenses incurred in the discharge of their duties to be paid from appropriations to the Institute.

The use of Institute personnel in educational programs shall be subject to approval of the educational affiliates concerned. Personnel from other institutions and agencies involved in research and educational activities shall be subject to the approval of the board of administration of the Institute. The State personnel and appropriation acts shall apply to the Institute.

CHAPTER 2.1

§ 29-23.2. *The laws embraced in this title shall constitute and are designated "The Game, Inland Fish and Dog Laws of Virginia." Whenever and wherever the following words and phrases are used in this title, or in any of the regulations pursuant thereto, the same shall be, unless the context clearly indicates otherwise, construed to mean as follows:*

(a) "Department" means Department of Conservation, Development and Natural Resources.

(b) "Commissioner" means Commissioner of the Department.

(c) "Division" means Division of Game and Inland Fisheries within the Department.

(d) "Director" means Director of the Division.

(e) "Board" means Game and Inland Fisheries Board.

(f) The phrase "by law" or "lawful" means the statutes of this State or the regulations which the Commissioner is empowered to enforce or a regulation which the Board is empowered to adopt.

(g) "Game warden" means and includes supervising wardens, regular and special game wardens and conservation officers.

(h) "Regulation" means a regulation of the Department or Board, duly adopted.

(i) "A properly licensed person" means a person who, while engaged in hunting, fishing or trapping, or in any other activity permitted under this title, in and upon the lands and inland waters of this State, has upon his person all the licenses, permits and stamps required by law.

(j) "Wildlife" means all species of wild animals, wild birds and freshwater fish in the public waters of this State.

(k) "Game" means wild animals and wild birds that are commonly hunted for sport or food.

(l) "Nonmigratory game" means all resident species of wild animals and wild birds.

(m) "Migratory game" means all species named in the regulation published by the U. S. Fish and Wildlife Service.

(n) "Game fish" means and includes brook, rainbow and brown trout, all of the sunfish family, including largemouth bass, smallmouth

bass and spotted bass, rock bass, bream, bluegill, crappie, walleyed pike or pike perch, white bass, wherever such fish are found in the waters of this State and rockfish or striped bass where found above tidewaters or in streams which are blocked from access from tidewaters by dams.

(o) "Game animals" include deer, elk, bear, rabbit, fox, and squirrel.

(p) "Fur-bearing animals" includes beaver, mink, muskrat, opossum, otter, and raccoon.

(q) "Predatory birds and animals" includes blackbird, buzzard, crow, English sparrow, hawk, jaybird, owl and starling, weasel, wildcat and all other wild animals not otherwise classed as game or fur-bearing animals.

(r) "Hunting and trapping" includes taking, hunting, trapping, shooting, snaring and/or netting such birds or animals, and includes attempting to take, hunt, trap, shoot, snare and/or net wild birds or wild animals, and assisting any person who is hunting or trapping or attempting to do so whether the same results in taking or not; provided that whenever hunting or trapping is permitted reference is made to so doing by lawful means and in a lawful manner.

(s) "Fishing" means taking, capturing, killing, or attempting to take, capture or kill any fish in and upon the inland waters of this State.

(t) "Closed season" means that period of time fixed by the Board during which wild animals, birds or fish may not be taken, captured, killed, pursued, hunted, trapped or possessed.

(u) "Open season" means that period of time fixed by the Board during which wild animals, wild birds and fish may be taken, captured, killed, pursued, trapped or possessed.

(v) "Bag or creel limit" means the quantity of game or fish or fur-bearing animals that may be taken, caught, or possessed during a period fixed by the Board.

(w) "Possession" means the exercise of control, either physical or constructive, of any wild animal, wild bird, fish or fur-bearing animal, or any part of the carcass thereof.

(x) "Transportation" means the transportation, either upon the person or by any other means, of any wild animal or wild bird or fish.

§ 29-23.3. The Commission of Game and Inland Fisheries and all offices created therein are abolished. The powers and duties heretofore exercised by such Commission and by the officers thereof shall hereafter be vested in the Department of Conservation, Development and Natural Resources and shall be exercised by the Commissioner or his lawful delegate, unless expressly designated to be exercised by the Game and Inland Fisheries Board. The title to and control of all property and records of every kind and description formerly held or controlled by the Commission of Game and Inland Fisheries shall be vested in the Commonwealth of Virginia, Department of Conservation, Development and Natural Resources, and all personnel of said Commission shall be transferred to the Department.

§ 29-23.4. (1) The State of Virginia hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and to such end no funds accruing to the State of Virginia from license fees paid by fishermen shall be diverted for any other purpose than the administration of the provisions of this title and for the protection, propagation, preservation, and investigation of fish.

(2) The Commissioner is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as deemed in such

Act of Congress, in compliance with said Act and rules and regulations promulgated by the Secretary of the Interior thereunder but not in conflict with State law.

§ 29-23.5. *The Commonwealth assents to the provisions of the Act of the Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes," approved September 2, 1937, and the Commissioner is authorized and directed to perform such acts as may be necessary to the conduct and establishment of such cooperative wildlife-restoration projects, as he may elect to adopt, as defined in such Act of Congress, in compliance with such Act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no moneys accruing to the Commonwealth from license fees paid by hunters shall be diverted for any other purpose than the administration of the provisions of this title.*

§ 29-23.6. (1) *The amount received by the State Treasurer from the sale of hunting, trapping and fishing licenses, the fifteen per centum dog fund and such other items as may accrue to the Department through the administration of the Game, Inland Fish and Dog laws, or by express designation in any other law, shall be set aside by him and shall constitute the Game Protection Fund. This fund, including any unexpended balance on hand at any time, shall be a separate fund in the State treasury and shall be used for the payment of the salaries, allowances, wages, and expenses incident to carrying out the provisions of the hunting, trapping, inland fish and dog laws and such regulations as the Board may promulgate thereunder and for no other purpose.*

(2) *The disbursements of the Department pursuant to this title shall be limited to the amount appropriated by the General Assembly from the Game Protection Fund and in no event shall the State pay obligations that may be so incurred by the Department or be liable in any manner therefore except to the extent of the Game Protection Fund.*

(3) *Accounts for salaries, allowances, wages and expenses authorized by the Commissioner shall be certified to the Comptroller for payment as the Commissioner may direct, subject to the general regulations of the Board.*

(4) *Upon receipt from the Comptroller, not later than the tenth of the month following, of an itemized list of the amounts of money, the date, sources and names of parties from which received, which came into the hands of the State Treasurer during the preceding months for credit to the Game Protection Fund, the Commissioner shall promptly cause the same to be entered upon the books of the Department to the credit of the accounts of the persons paying the same.*

§ 29-23.7. *The jurisdiction of the Board shall extend to the protection, propagation, and preservation of game birds and game animals of this State and all fish in the inland waters thereof, which waters shall be construed to mean and to include all waters above tide water and the brackish and freshwater streams, creeks, bays, including Back Bay, inlets, and ponds in the tidewater counties, and all dog laws.*

§ 29-23.8. *The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision of the Environmental Coordination Act of 1973 shall control; provided, however, that the provisions embraced in this title in regard to the procedures for the adoption and promulgation of regulations shall apply to*

the adoption and promulgation of regulations adopted by the Board.

§ 29-23.9. The Game and Inland Fisheries Board shall be under the duty and it shall have the authority:

(1) To establish by regulation such policies and standards as it deems necessary or advisable for the conservation, protection, replenishment, propagation of and increasing of the supply of game birds, game animals and fish and other wildlife of the State.

(2) To advise the Commissioner in the execution of these standards and policies and particularly in the execution of his powers and duties in § 29-23.10 (2).

(3) To establish policies and requirements governing the acquisition of lands and waters for game and fish refuges, preserves or for public shooting and fishing, and to designate and regulate particular lands and waters to that end.

(4) To establish, under such regulations as it may deem proper, refuges, sanctuaries and public shooting and fishing reserves in and on all impounded water areas in this State resulting from power development; and in all forest and watershed areas in this State which are now owned, or which may hereafter be acquired, by the United States Government, subject to the rights and powers of the United States Department of Agriculture therein.

(5) To make rules for its own organization and to have such other general and specific powers and duties as may be conferred upon it by law.

(6) To hear appeals as provided in §§ 10-17.58 through 10-17.64.

§ 29-23.10. It shall be the duty of the Commissioner and he shall have the authority:

(1) To exercise general supervision and control over the conservation, protection, replenishment, propagation of and increasing of the supply of game birds, game animals and fish and other wildlife of the State, as provided in Title 29 and to administer and enforce the laws and regulations of the Commonwealth pursuant thereto, all certificates, licenses, rulings and rules promulgated by him thereunder, and all standards and policies promulgated by the Board thereunder.

(2) To exercise the general power and authority of the Department, in addition to the special authority herein and elsewhere conferred by law:

(a) to acquire by purchase, lease, exchange, gift or otherwise, such lands and waters anywhere in this State as he may deem expedient and proper; to establish and erect thereon and therein such buildings, structures, dams, lakes and ponds as he may deem necessary and proper, and to conduct and carry on such operations for the preservation and propagation of game birds, game animals, fish and other wildlife as he may deem proper and in conformity with such regulations as the Board may prescribe to increase, replenish and restock the lands and inland waters of the State;

(b) to purchase, lease, or otherwise acquire lands and waters in conformity with such regulations as the Board may prescribe for game and fish refuges, preserves or public shooting and fishing;

(c) to acquire and introduce in conformity with such legislation as the Board may prescribe any new species of game birds, game animals or fish on the lands and within the waters in the State;

(d) to adopt such other means as he may deem necessary in conformity with such regulations as the Board may prescribe to restock, replenish and increase any depleted native species of game birds, game animals, or fish;

(e) to have educational matter pertaining to wildlife published and

distributed, to hold exhibits throughout the State for the purpose of interesting school children, agriculturalists and other persons in the preservation and propagation of the wildlife of this State, to employ speakers and lecturers to disseminate information concerning the wildlife of the State and the protection, replenishment and propagation thereof;

(f) to do such other things in conformity with such regulations as the Board may prescribe as he may deem necessary and proper for the conservation, protection, replenishment, propagation of and increasing of the supply of game birds, game animals and fish and other wildlife of the State.

(3) To permit in his discretion the educational television entities in Virginia to use land, under the jurisdiction of the Department under this title, for the site location of towers and other transmission equipment as required for the most efficient operation of their facilities.

(4) To lease, with the approval of the Governor and upon such terms and conditions as deemed advisable by the Board, any lands or buildings owned by the Department to private persons, corporations, public authorities duly created by law or political subdivisions of the State, in a form to be approved by the Attorney General, when such action is otherwise consistent with the powers, authority, and responsibilities of the Department. Any such lease if for a term of more than five years shall be authorized only after a public hearing by the Department.

(5) To exercise full control, subject to the general regulations of the Board, of the hunting and fishing rights and privileges in and on all impounded water areas in this State resulting from power development, and in all forest and watershed areas in this State which are now owned or which may hereafter be acquired by the United States Government, subject to the rights and powers of the United States Department of Agriculture therein and subject as well to any Board regulations of specific application to refuges, sanctuaries, and public shooting and fishing reserves in such areas.

(6) To exercise the sole power and authority of the Commonwealth to enforce or cause to be enforced all laws and applicable regulations for the protection, propagation and preservation of game birds and animals of this State and all fish in the inland waters thereof; to prosecute all persons who violate such laws and regulations and seize and confiscate any and all wild birds, wild animals and fish that have been illegally killed, caught, transported or shipped.

(7) To adopt rules for the internal management of the Department.

(8) To employ in his discretion such persons as may be necessary to meet administrative requirements and designate the official position and duties of each. He shall employ and make available to local governing bodies on request, a person skilled in predatory control of all wild animals recognized as carriers of rabies.

(9) To review and approve all acts of these employees.

(10) To render such staff and technical assistance to the Game and Inland Fisheries Board as the Board may require in the performance of its duties.

(11) To manage and harvest timber on the lands of the Department held pursuant to this title, in accordance with the best timber and game management practices and the general regulations of the Board, or any other applicable regulations, and to sell the same, whenever he deems it necessary or expedient to do so. Before any such sale shall be made the State Forester or his deputy shall furnish the Commissioner with an estimate of value of such timber.

(a) In the event of a sale of the timber, the proceeds shall be deposited

in the State treasury to the credit of the Game Protection Fund.

(b) In the event that the Department in the management of any State-owned land under the Department's control pursuant to this title, shall cut and sell or sell for cutting any timber standing on such land, there shall be paid to the county or city in which is situated the land on which such timber is located, twenty-five per centum of the proceeds of such sale after the cost of any road constructed by the Department, which is necessary for the sale of the timber, has been deducted.

(12) To hold open to examination by the Governor and Auditor of Public Accounts or their representatives, at any and all times, the minute books and other records of the Department in regard to game, inland fisheries and dogs.

(13) To make an annual report as of June thirtieth to the Governor as soon as practicable after the close of business each year, which report shall contain an itemized statement of collections and disbursements, explanatory statistics, recommendations for legislation and such other matters as the Department may desire to bring to the attention of the Governor and the General Assembly. This report and the other printed matter necessary to carry out the provisions of this title shall be printed under the direction of the Commissioner and paid for out of the Game Protection Fund.

§ 29-24. Appointment.—The ~~Commissioner~~ Commissioner shall appoint not more than six supervisors and such regular and special game wardens as ~~it~~ he may deem necessary to enforce the game, inland fish and dog laws, which appointments shall be based upon a practical knowledge of the bird, animal and fish life of the State, and before making an appointment, the ~~Commissioner~~ Commissioner may, in ~~its~~ his discretion, subject the applicant to an oral or written examination designed to test his knowledge and fitness for the place.

§ 29-27. Bond.—Before entering upon the discharge of his official duties, each game warden shall qualify, giving bond with some guaranty company, authorized to do business within this State, as surety, in the penalty of one thousand dollars payable to the Commonwealth of Virginia, with the condition that he will well and truly account for and legally apply all money which may come into his hands in his official capacity, and to pay all judgments rendered against him for malicious prosecution or for unlawful search, arrest or imprisonment, and that he will faithfully perform all of the duties enjoined upon him by law. Such bonds shall be filed in the office of the ~~Commissioner~~ Commissioner and shall be subject to the approval of the ~~Commissioner~~ Commissioner or ~~its~~ his designated officer. The premium on such bonds shall be paid out of the Game Protection Fund.

§ 29-28. Certificate of appointment.—The ~~Executive Director~~ Commissioner shall issue a certificate of appointment, over his signature, to each game warden.

§ 29-31. The game wardens shall assist the ~~Commissioner~~ Commissioner in the discharge of ~~its~~ his official duties and each regular and special game warden shall be under the supervision of such supervising game warden as the ~~Commissioner~~ Commissioner may direct.

§ 29-32. Power to make arrests.—All game wardens are vested with the authority, upon displaying badge or other credential of office, to arrest any person found in the act of violating any of the provisions of the hunting, trapping, inland fish and dog laws.

Any game warden shall have general police power while in the performance of his duty on properties owned or controlled by the ~~Commissioner of Game and Inland Fisheries~~ Department.

§ 29-35.1. Taking samples of water believed to be polluted.—Any game warden appointed under the provisions of this title may, and shall

when requested by a member of the governing body of a county, city or town, take samples of water from any stream in this State when he has reason to believe that such water may be polluted for any reason. Any game warden taking any such sample shall take the same in a clean container, seal it forthwith, and thereupon send it to the ~~State Water Control Board~~, hereinafter referred to as *Board, Department*. At the time the warden takes such sample, he shall enclose therewith a statement in reasonable detail showing the time and place when and where the sample was taken in such manner as will permit the place and time of taking to be identified; such statement shall be signed by the warden taking the sample and forwarded with it. The warden shall keep and sign the original of such statement.

§ 29-35.2. Upon the receipt of any such sample sent the *Board Department* under § 29-35.1, the *Board Department* shall have a chemical analysis thereof made by a chemist employed by the *Board Department* or retained especially for such purpose. If the results of such analysis show that such sample of water was polluted, the *Board Department* shall have made such further studies and analyses as may be requisite to determine the nature and extent of such pollution and the most effective measures for controlling the same.

The *Board Department* shall thereafter proceed as provided in ~~Chapter 2 of Title 62 [Chapter 3 (§ 62.1-14 § 62.1-44.45 et seq.) of Title 62.1]~~ of the Code of Virginia.

§ 29-37. Reports.—Regular and special game wardens shall file such reports, in such form, as the ~~Commissioner~~ *Commissioner* from time to time may require.

§ 29-37.1. Special game wardens receiving no compensation from State.—On request of any employer owning forest lands in this State with an acreage in excess of one thousand acres, the ~~Commissioner~~ *Commissioner* may appoint persons employed by him as foresters or forest technicians as special game wardens. No such special game warden shall receive any compensation from the State for his services as such. Any such special game warden shall give the bond required by § 29-27 prior to acting hereunder and shall make the reports required by § 29-37. The powers and authority of such special game warden shall not extend beyond the lands of his employer. The ~~Commissioner~~ *Commissioner* may require such duties of any special game warden on such lands as are required for the enforcement of this act.

§ 29-37.2. Defense of game warden prosecuted on criminal charge.—If any game warden appointed by the ~~Commissioner~~ *Commissioner* shall be prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties, the ~~Executive Director~~ *Commissioner* may employ special counsel approved by the Governor to defend such officer. The compensation for special counsel employed pursuant to this section, shall, subject to the approval of the Governor, be paid out of the funds appropriated for the administration of the ~~Commission of game and inland Fisheries fish and dog laws~~.

§ 29-38. Licenses for shooting preserves.—The ~~Commissioner~~ *Commissioner* is authorized to issue licenses for shooting preserves when, in the judgment of the ~~Commissioner~~ *Commissioner*, operations under such licenses will result in a net increase in the supply of upland game birds and animals in the Commonwealth, and will otherwise be in the public interest. A fee of five dollars shall be collected for each such license, when the area for which the license is granted is of five hundred acres or less, and an additional fee of five dollars shall be collected for each additional five hundred acres or fraction thereof. All license fees collected under this section shall be credited to the Game Protection Fund. All such licenses shall expire on June thirtieth of each year.

§ 29-39. Applicant to own or have land under lease; boundaries.—No license shall be granted unless the applicant shall own or have under lease the areas for which the license is desired. Boundaries of the area licensed shall be clearly defined by at least one strand of wire, or by a fence clearly recognizable as such, and by such posting as shall be prescribed by the ~~Commission~~ Board.

§ 29-40. Applicant to develop land, release game and comply with other provisions.—The applicant shall develop the lands to be licensed as a shooting preserve so as to meet such requirements as the ~~Commission~~ Board may make; release such game birds and animals as may be designated by the ~~Commission~~ Board; and comply with such other provisions as the ~~Commission~~ Board may deem advisable to promote wildlife.

§ 29-41. Until the requirements specified by the ~~Commission~~ Board have been fulfilled by the applicant to the satisfaction of the ~~Commission~~ Commissioner and certified to and accepted by the ~~Commission~~ Commissioner, it shall be unlawful to shoot, attempt to shoot, or to take otherwise any game of the species licensed under this chapter on premises so licensed.

§ 29-42. Hunting, etc., after compliance with requirements.—When the requirements specified by the ~~Commission~~ Board shall have been certified and accepted by the ~~Commission~~ Commissioner, and when such persons are otherwise lawfully entitled to hunt game, the licensee and such other persons as he may designate, because of payment of fees or otherwise, may hunt on the licensed premises, and shoot, have in possession, transport and dispose of by gift any game birds or animals of the species licensed, provided that the number of such birds or animals so shot, possessed, transported or disposed of by gift shall not exceed the bag or possession limits stated in the rules governing the shooting preserve. Game birds or animals not covered by the shooting preserve license may be taken and possessed by the licensee or his guests as otherwise provided by State law or regulation.

§ 29-43. Record of game shot.—A full record covering each item of game shot on the licensed premises shall be kept by the licensee or his designated agent, and a copy of this record under oath shall be filed with the ~~Commission~~ Commissioner within fifteen days after the close of the hunting season, and no license shall be renewed until such record for the preceding year shall have been filed with and accepted by the ~~Commission~~ Commissioner.

§ 29-44. Seals to be attached to shot game.—No shot game of the species named in the license shall be removed from the licensed premises until there has been securely attached to such game a metallic seal, the type and design of which shall be designated by the ~~Commission~~ Board, and such seal shall remain attached to such game until it is finally prepared for consumption.

§ 29-45. Hunting season and bag limit.—The length of the hunting season on such preserves and the size of the bag limit shall be ~~in accordance with rules of the Commission~~ determined by the Board.

§ 29-46. The ~~Commission~~ Board is authorized to make such rules as shall be necessary to carry out the intents and purposes of this chapter, which rules shall be effective ten days after written notice has been sent to each holder of a shooting preserve license.

§ 29-47. Revocation of license.—Any shooting preserve license may be revoked by the ~~Commission~~ Commissioner upon evidence that the provisions of the contract entered into by the license holder are being violated.

§ 29-50. State game sanctuaries.—Any landowner may assign the wildlife rights on his land to the State and enter into an agreement with the ~~Commission~~ Department permitting it to use such land if it sees fit as a State game sanctuary. Such agreement shall be for a period of not

less than five years. The ~~Commission~~ *Commissioner* may permit such owner to capture, kill, and dispose of any species of wild bird or wild animal on such sanctuary under such regulations ~~it~~ *as the Board* may adopt. All such land shall be conspicuously posted as a State game sanctuary. The ~~Commission~~ *Commissioner* may capture and remove any species of bird or animal from such sanctuary for breeding and restocking purposes.

§ 29-52. Exemptions from license requirements.—(1) License shall not be required of landowners, their husbands or wives and their children and minor grandchildren, resident or nonresident, to hunt, trap and fish within the boundaries of their own lands and inland waters.

(2) License shall not be required of bona fide tenants, renters or lessees to hunt, trap or fish within the boundaries of the lands or waters of which they are tenant, renter or lessee and on which they reside; provided such tenant, renter or lessee has the written consent of the landlord upon his person, and provided further that a guest of the owner of a private fish pond shall not be required to have a fishing license to fish in such pond.

(3) License shall not be required of resident persons under sixteen years old to trap or fish, nor of a resident person seventy years of age or over to hunt, trap or fish on private property in the county in which he resides. A resident seventy years of age or older may upon proof of age satisfactory to the ~~Commission~~ *Commissioner* and the payment of a five dollar fee, apply for and receive from the ~~Commission~~ *Commissioner* a nontransferable license valid for life permitting such person to hunt, trap or fish on any property in any and all cities and counties of the State according to restrictions and regulations of law.

(3a) License to fish except for trout as provided in § 29-55 (b) shall not be required of nonresident persons under twelve years of age when accompanied by a person possessing a valid license to fish in Virginia.

(4) License shall not be required to trap for rabbits with box traps.

(5) License shall not be required of any Indian who habitually resides on an Indian reservation, provided that such Indian has on his person an identification card or paper signed by the chief of his reservation, setting forth that the person named therein is an actual resident upon such reservation. Such card or paper shall create a presumption of such residence, which may be rebutted by proof of actual residence elsewhere.

§ 29-55. Fees to fish only.—(a) The license fees to fish only, which licenses shall not permit fishing for trout in waters stocked by the ~~Commission~~ *Department* or other public body, or creeling (retaining) trout caught in the South Holston reservoir, shall be as follows:

(1) State resident season license to fish only, within the regulations and restrictions provided by law, in all inland waters of the State, three dollars and fifty cents; provided that no such license shall be required of resident persons seventy years of age or older.

(2) State nonresident season license to fish only, by any method, within the regulations and restrictions provided by law, in all inland waters of the State, ten dollars.

(b) The license fees to fish in designated waters stocked with trout by the ~~Commission~~ *Department*, or other public body, by any method, and to creel (retain) trout caught in the South Holston reservoir, within the regulations and restrictions provided by law, in addition to the regular fishing license, shall be as follows:

(1) State resident season license one dollar; provided that no such license shall be required of resident persons seventy years or older.

(2) State nonresident season license five dollars.

§ 29-55.4. In addition to the license fees heretofore provided for, the

~~Commission Board~~ may impose daily use fees, not to exceed one dollar, and issue permits therefor to fish in such specially stocked trout streams as may be designated by the ~~Commission Board~~. The proceeds from such fees shall be set aside and used exclusively by the ~~Commission Commissioner~~ for the stocking and management of such streams. Such permits shall be issued by such person or persons as may be designated by the ~~Commission Commissioner~~ at or near the area in which such permits are required.

§ 29-57.1. In addition to the license fees heretofore provided for, the ~~Commission Commissioner~~ may impose daily use fees, not to exceed three dollars, and issue permits therefor to hunt on such lands owned by the ~~Commission Department~~ within the territorial boundaries of the city of Virginia Beach. The proceeds from such fees shall be set aside and used exclusively by the ~~Commission Commissioner~~ for replenishment of game upon and management of such lands or facilities. Such permits shall be issued by such person or persons as may be designated by the ~~Commission Commissioner~~ at or near the area in which such permits are required.

§ 29-57.1:1. The ~~Commission Commissioner~~ shall have authority to issue at the regular fee up to twenty-five State resident licenses to fish in the name of any State institution operated by the State Hospital Board for use by patients of the institution. Licenses issued pursuant to this section shall be valid for use by any patient of the institution to which the license is issued.

§ 29-57.2. In addition to the license fees heretofore provided for, the ~~Commission may impose Board may establish~~ reasonable daily use fees and issue permits therefor to hunt game birds on such specially stocked areas as may be owned or controlled by the ~~Department~~ and so designated by the ~~Commission Board~~. The proceeds from such fees shall be set aside and used exclusively by the ~~Commission Commissioner~~ for the stocking and management of such lands, and the hunting thereof may be done under such regulations as the ~~Commission Board~~ may prescribe. Such permit shall be issued by such person or persons as may be designated by the ~~Commission Commissioner~~ at or near the area in which such permits are required.

§ 29-58. Persons entitled to State licenses.—All persons not enumerated in the preceding section (§ 29-57), who have resided in this State for six months or more next preceding the date of the application, shall be entitled to a State resident license to hunt, trap or fish. Upon execution of a certificate of residence prescribed by the ~~Commission of Game and Inland Fisheries Commissioner~~, all persons who are and for two or more months next preceding the date of the application have been domiciliary residents of Virginia shall be entitled to a county or city license to hunt, trap or fish in the city or county in which they reside, or to a State resident license to hunt, trap or fish.

§ 29-61. By whom licenses issued.—The clerks of the corporation courts of cities having a population of not less than fourteen thousand nor more than twenty thousand according to the last preceding decennial census shall issue State licenses and county licenses for those counties contiguous to their respective cities, and the clerks of the circuit courts of counties, and such agents as the ~~Commission Commissioner~~ may otherwise designate, shall issue State licenses and county licenses for their respective counties as provided for in this title and shall date and sign the same.

§ 29-64. Contents of application.—Except as to those licenses issued pursuant to § 29-57.1:1, all applications shall be made in writing on blanks supplied by the ~~Commission Commissioner~~, setting forth the applicant's age, color of hair and eyes, height, post office address and such information as may be required by the particular application under the provisions of §§ 29-57 to 29-60; provided, that the clerks of corporation courts of cities of the size defined in § 29-57, subsection (f) shall also have au-

thority to issue county licenses for the county in which the city is located, to bona fide residents of such city, or of such county, making application to such clerk therefor, in accordance with the provisions of §§ 29-62 and 29-63, concerning application for and issuance of county licenses.

§ 29-65. Agents for sale of licenses and permits.—The ~~Commissioner~~ *Commissioner* shall have authority to appoint agents for the issuance and sale of the permits provided for in this title; the ~~Commissioner~~ *Commissioner* may designate agents in counties, cities and towns for the issuance and sale of licenses provided for in this title. If the clerk of any court desires to be relieved of this duty, or gives his consent thereto in writing, the ~~Commissioner~~ *Commissioner* shall have authority to require ~~its~~ *his* agents also to sell hunting, trapping and fishing licenses in the place of or in addition to the clerk; provided, however, that in the counties of Caroline, Franklin, Rockingham and Scott the ~~Commissioner~~ *Commissioner* may appoint not exceeding five agents, and in the county of Pittsylvania not exceeding ten agents, and in the city of Lynchburg and the counties of Wythe, Carroll, Floyd and Montgomery not exceeding three agents, for the sale of such permits and licenses who shall be in addition to the clerk of the circuit or corporation court of such county or city. Such agents shall be subject to the laws covering the issuance and sale of licenses and the regulations of the ~~Commission Board~~ as to the issuance and sale of ~~permits licenses~~. The compensation of agents for issuing licenses and permits shall be fixed by the ~~Commission Board~~ but shall not be more for issuing licenses than provided in this title for clerks of courts. Before such appointment shall become effective, the agent shall deposit with the ~~Commissioner~~ *Commissioner* a bond of a surety company entitled to do business in this State, payable to the Commonwealth, in the penalty of one thousand dollars, or such additional amount as the ~~Commission Board~~ may require, conditioned for the faithful performance of his duties.

§ 29-67. Numbering and forms.—Licenses shall be numbered and printed in such forms as the ~~Commissioner~~ *Commissioner* may determine.

§ 29-68. Delivery to clerk or agent; record of licenses issued; return of unsold licenses.—The ~~Commissioner~~ *Commissioner* shall send to each clerk or agent on or before June twenty-fifth of each year as many licenses as it may deem necessary and shall charge him with the number sent. The clerk or agent shall keep a correct and complete record of all licenses issued, in a book to be furnished by the ~~Commissioner~~ *Commissioner*, which record shall remain open to inspection by the public at all reasonable times. Clerks and agents shall return to the ~~Commissioner~~ *Commissioner* all unsold licenses and the stubs of licenses sold on July first of each year, or within ten days thereafter.

§ 29-68.1. Licenses to be dated, numbered and signed, and to contain certain information.—All licenses shall be dated, numbered, and signed by the clerk or agent and besides showing other information required by law or thought pertinent by the ~~Commissioner~~ *Commissioner*, shall have printed in red on the top of the face thereof in bold type equal in size to the largest type appearing thereon, the following words:

“See Back for Legal Restrictions of License,” and, on the back of license, there shall be printed a concise but full statement of the law applying to persons hunting, fishing or trapping on the lands, waters, ponds, boats or blinds of another without the consent of the owner.

§ 29-69. License receipts; compensation for issuing.—The gross amount of money received for licenses issued under this title shall be paid into the State treasury by each clerk or agent and he shall receive for such service fifteen cents for a county or city license and twenty cents for all other kinds of licenses issued by him, payable by the State Treasurer, on warrant of the Comptroller, after audit by the ~~Commissioner~~ *Commissioner* of the amount due. There shall be appropriated out of such gross

receipts such sums as may be necessary for this purpose.

§ 29-70. Reports to Comptroller as to sale of licenses.—When remitting to the State Treasurer, each clerk or agent shall make a report to the Comptroller on form provided by him, a copy of which he shall send the ~~Commission~~ Commissioner, which shall show the serial numbers and quantity of licenses of each kind received, sold and on hand unsold, the amount of gross collections for each kind and the grand total remitted to the State Treasurer.

§ 29-73. Time of report and remittance.—The reports to the Comptroller and ~~Commission~~ Commissioner and the remittances to the State Treasurer shall be made as follows:

(a) For July, August and September, quarterly not later than October fifth.

(b) For October, November and December, monthly, not later than the fifth of the succeeding month.

(c) For January, February and March, quarterly, not later than April fifth.

(d) For April, May and June, quarterly, not later than July fifth.

§ 29-74. Certificate when license lost or destroyed.—If a license becomes lost or destroyed, it shall be the duty of the person to whom issued immediately to apply to the clerk or agent who issued the same for a license certificate. Upon affidavit that the license has become lost or destroyed, the clerk or agent shall issue a license certificate and endorse the number of the original license and date of issue thereon. The fee of the clerk or agent for acknowledging the affidavit and issuing a license certificate shall be twenty-five cents and shall be paid by the applicant. The clerk or agent shall not be required to remit to the Comptroller his fees for issuing license certificates. No licenses shall be redeemed or exchanged. Special licenses shall be attached to the report of the clerk or agent and sent to the ~~Commission~~ Commissioner, proper deductions from the gross amount being made therefor. The ~~Commission~~ Commissioner shall furnish forms of affidavits and license certificates as required by this section.

§ 29-75. Carrying and displaying licenses.—Every person of whom license is required must carry such license and shall show the same immediately upon demand of any officer whose duty it is to enforce the game and inland fish laws, or upon the demand of any owner or lessee, or of any employee or representative of such owner or lessee, upon whose lands or waters such person may be hunting, trapping or fishing. Failure to exhibit license upon demand of any game warden or other officer shall be a misdemeanor and prima facie evidence that such person is hunting, trapping or fishing without license. In the discretion of the ~~Commission~~ Commissioner, ~~it~~ he may supply buttons or license holders and require the license or button to be displayed in such manner as ~~it~~ he may determine.

§ 29-77. Revocation of license.—If any person be found guilty of violating any of the provisions of the hunting, trapping, and/or inland fish laws, and/or § 33-287 of the Code of Virginia and/or regulations adopted by the ~~Commission~~ Board pursuant thereto, a second time within two years of a previous conviction of violating any such law or regulation, or if any person be found guilty of violating any provisions of law or ordinance governing the dumping of refuse, trash or other litter, while engaged in hunting, trapping or fishing, the license issued to such person shall be revoked by the court trying the case and he shall not apply for a new license until twelve months succeeding date of conviction. If found hunting, trapping or fishing during such prohibited period, such person shall pay a fine of not less than fifty dollars nor more than one hundred dollars. Licenses revoked shall be sent to the ~~Commission~~ Commissioner.

§ 29-80. Complimentary licenses.—The ~~Commission~~ Commissioner is authorized to issue complimentary hunting licenses and complimentary

fishing licenses to the field inspectors of the United States Fish and Wildlife Service and public officials of the United States and of other states engaged in conservation work; provided not more than seventy-five such complimentary hunting licenses and one hundred and fifty such complimentary fishing licenses shall be issued during one fiscal year.

§ 29-89. Obtaining licenses.—All applicants for blind licenses under this article shall be made to the clerk of the circuit court of the county wherein or nearest which the blind site is located or in which it is to be used, who shall be paid similar fees as for issuing hunting licenses. With each license, the clerk shall deliver a metal license plate bearing the number of the license, which shall be affixed to the blind where it may be easily observed. The ~~Commission~~ *Commissioner* shall furnish the licenses and license plates provided for in this article. The money arising from the sale of blind licenses shall be paid into the Game Protection Fund.

§ 29-92. The ~~Commission~~ *Board* shall have the power to amend or alter the provisions of this article by regulation prescribing a lesser distance between blinds than five hundred yards whenever and wherever such action seems practicable and desirable and may adopt other regulations concerning the use of such blinds as may appear advisable to meet changing conditions as to hunting migratory game birds ~~and the regulations of the Commission now applying to such hunting are hereby continued in force until amended or repealed by the Commission~~; provided, however, that the ~~Commission~~ *Board* shall not have the power to alter in any respect, by any means whatsoever, the privileges prescribed for owners and their lessees and permittees in §§ 29-85 and 29-88.

§ 29-98. Term of permits; application.—All fur permits shall be for the fiscal year, July first to June thirtieth, inclusive, and shall be obtained from the ~~Commission~~ *Commissioner* by making written application.

§ 29-99. Qualifications of permittee.—The qualifications obtaining for securing resident county and State hunting and fishing licenses shall apply to obtaining permits under this article and the ~~Commission~~ *Commissioner* may require affidavit as to correctness of facts set forth on the application.

§ 29-100. Reports of permittees.—Each permit holder shall report to the ~~Commission~~ *Commissioner* at the end of each fiscal year, or in ten days thereafter, the number of each species of hides, furs or pelts bought and the total amount paid for each species during each fiscal year and the total of all hides, furs or pelts bought and the total amount paid therefor.

§ 29-104. Issuance discretionary.—The issuance of all of the permits provided by this article shall be within the discretion of the ~~Commission~~ *Commissioner* and under such regulations as ~~it~~ *the Board* may prescribe, ~~including such reports as it may require~~.

§ 29-110. Netting fish.—The fee for a permit to net fish in inland waters, for private table use and not for sale, shall be as follows: county dip net, gill net or fyke net, one dollar each; haul seine, two dollars and fifty cents; minnow haul seine to catch minnows for sale, except from private waters, two dollars and fifty cents; haul seine to catch shad, herring and mullet, or suckers, for sale, five dollars; provided, that the ~~Commission of Game and Inland Fisheries~~ *Board* may permit a licensee to use dip nets, gill nets or fyke nets to take for sale fish of any designated species in the waters of Back Bay and its tributaries.

§ 29-111. Holding wild birds and animals.—The fee for a permit to hold wild birds and animals in captivity for exhibition or advertising purposes shall be five dollars; provided that the ~~Commission~~ *Commissioner* may issue free permits to landowners to capture and hold wild birds and

animals for breeding and liberation to increase the supply, which shall be liberated when and as directed by the ~~Commission~~ Commissioner.

§ 29-112.1. Raising bobwhite quail in captivity for use as food.—The fee for a permit to raise bobwhite quail in captivity for use as food, under such rules and regulations as the ~~Commission~~ Board may prescribe, shall be twenty-five dollars.

§ 29-114. Capture of breeding stock.—The ~~Commission~~ Board may authorize the capture of breeding stock for fur farmers and game and fish breeders in such manner as it may determine, which shall not be liberated or disposed of except as directed by the ~~Commission~~ Board.

§ 29-114.1. Sale of game fish for propagation purposes.—The ~~Commission~~ Commissioner is authorized to issue permits to private fish pond owners to sell game fish therefrom for propagation purposes only.

§ 29-114.2. Taking, holding, etc., of falcons, hawks and owls; use to hunt wild game.—Notwithstanding any other provision of law, the ~~Commission~~ Board may:

(1) Permit the taking, trapping, holding, transportation, carriage and shipment of live falcons, hawks and owls; provided that the fee for such permit shall be five dollars and such permit shall entitle the holder thereof to have in possession at any one time not more than two of any such birds.

(2) Authorize the use of falcons, hawks, and owls to hunt and take all species of wild birds and wild animals; provided that the hunting of migratory game birds shall be in accordance with § 29-137; and provided further, that appropriate hunting licenses shall be required as provided in Chapter 5 (§ 29-51 et seq.) of this title.

§ 29-115. From whom permits obtained.—The permits provided for in this article may be obtained from the ~~Commission~~ Commissioner except that county dip net permits shall be sold by clerks and agents.

§ 29-117. Permit required; exceptions.—No resident or nonresident shall hunt, fish, or trap on any lands in the national forests in this State without first obtaining, in addition to the regular resident or nonresident license, a special permit to hunt, fish, or trap on such areas in the national forests as the ~~Commission~~ Commissioner and the Forest Service may agree upon; provided, that no such permit shall be required of the following: (a) residents under the age of sixteen to fish or trap; (b) residents over the age of seventy to fish; (c) nonresidents under the age of twelve to fish, except for trout, when accompanied by a person possessing a valid license to fish therein; (d) residents possessing a license as provided by § 29-52 (3); and (e) persons holding a license as provided by § 29-80.

§ 29-119. Disposition of funds.—The funds derived from the sale of such special permits shall be used by the ~~Commission~~ Commissioner for game and fish management purposes within the national forests in this State, or, in the discretion of the ~~Commission~~ Commissioner shall be paid into the United States treasury as a cooperative deposit for use of the United States Forest Service for game and fish management purposes within the aforesaid area.

§ 29-120. Cooperative agreement.—The ~~Commission~~ Commissioner shall enter into a cooperative agreement with the United States Forest Service, such cooperative agreement to define the means and methods to be taken to improve the fish and game resources of the national forests of this State and to program the expenditure of all funds derived from this special permit.

§ 29-125. Having a due regard for the distribution, abundance, economic value and breeding habits of wild birds, wild animals, and fish in inland waters, the ~~Commission~~ Board is hereby vested with the necessary power to determine when, to what extent, if at all, and by what means

it is desirable to restrict, extend or prohibit in any degree the provisions of law obtaining in this State or any part thereof for the hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage or export of any wild bird, wild animal, or fish from inland waters and may upon its own motion or upon written petition of one hundred licensed resident landowners of any county propose regulations for such purpose.

§ 29-126. Publication of proposed regulations or change therein; validation; evidentiary nature of publication.—(a) The full text of any proposed regulation or change in the regulations shall be published not less than fifteen nor more than thirty days before the same may be acted upon and shall name the time and place that the matters mentioned therein will be taken up, at which time any interested citizen shall be heard. Such publication, if the proposed regulation or change in the regulations be of local application, shall be made in a newspaper published in the county, or, if there be none such, in a newspaper in the adjoining county or section or in such other manner as may be convenient. However, such publication, if the proposed regulation or change in the regulations be of Statewide application, shall be made in a newspaper in every county and city in which a newspaper is published. Also, a copy of such proposed regulation or change in the regulations, being of either local application or Statewide application, shall be filed in the office of the Division of Statutory Research and Drafting, where it shall be subject to inspection during office hours by any person. Such filing must not be less than fifteen nor more than thirty days prior to the day on which the public hearing on such proposed regulation or change in the regulations is to be held. All regulations or changes in the regulations published in accordance with this paragraph as amended are hereby validated.

(b) Prima facie evidence of any such regulation may be given in all courts and proceedings by the production of a certified copy of such regulation or regulations, which certification shall be made by the ~~Executive Director of the Commission~~ *Commissioner* or his deputy.

§ 29-127. Adoption of regulations.—If the ~~Commission Board~~ is satisfied that the proposed regulation, or any part thereof, is advisable, such regulation, or any part thereof, may be adopted and if so, it shall be published in the manner directed for proposing the same and shall name the date when it is to become effective.

§ 29-128. Posting regulations on bulletin board at courthouse.—A copy of any regulation adopted by the ~~Commission Board~~ shall be mailed to the game warden of each county or city wherein such regulation will be effective, who shall deliver one copy to the clerk of the circuit or corporation court, and shall post a copy of such regulation on the bulletin board at the courthouse thereof.

§ 29-128.1. Annual publication of laws and regulations.—All laws relating to hunting, fishing and trapping, together with the regulations of the ~~Commission Board~~, and all exceptions thereto, of both general and local application, shall be published once each year by the ~~Commission Commissioner~~ in a handbook or pamphlet. The courts of the Commonwealth shall take judicial notice of all laws and regulations contained in such publication.

§ 29-129.1. Prescribing seasons and bag limits for taking fish and game.—Notwithstanding any other provisions hereafter enacted or ordained of local or special law, or any local ordinance the ~~Commission Board~~ shall have power, after careful study of each species of wild bird, animal and fish within the jurisdiction of the ~~Commission Board~~ in cities and counties of the State to prescribe the seasons and bag limits for hunting, fishing, trapping or otherwise taking such wild birds, animals and

fish by regulation adopted as provided in this article.

§ 29-130. Closing or shortening open season.—Whenever extreme weather threatens the welfare of wild birds, wild animals or fish or whenever such wild birds, wild animals or fish have been seriously affected by adverse weather conditions or when investigation of the ~~Commissioner~~ ~~Commissioner~~ shows that there is an unusual scarcity of any species thereof, or when there is substantial demand from any section or county, the ~~Commissioner~~ ~~Commissioner~~ may in conformance with such regulations as the Board may prescribe close or shorten the open season in the section or county affected and the Commissioner shall give notice thereof immediately by publishing such action in one or more newspapers having a general circulation in the section or county, which notice shall be published at least three days before such action shall become effective.

§ 29-130.1. The ~~Commission of Game and Inland Fisheries Board~~ is hereby authorized, notwithstanding any other provision of law or local ordinance to the contrary, to prescribe, and enforce by regulation, the seasons, bag limits and methods of taking fish and game on lands and waters owned by such ~~Commission~~ the Department and on lands owned by others but controlled by such ~~Commission~~ Department. The Commissioner shall enforce such regulations.

The ~~Commission Board~~ shall exercise its powers under this section by the adoption of rules and regulations in the manner provided by law.

§ 29-132. Other definitions.—For the purpose of the hunting and trapping laws of this State, big game shall include bear, deer and elk and small game shall include all other game birds and game animals.

Wild birds and wild animals shall be classed as follows:

(a) *Nonmigratory game birds.*—Birds introduced by the ~~Commissioner~~ Commissioner, grouse, ringnecked pheasant, bobwhite, quail and turkey.

(b) *Migratory game birds.*—Doves, ducks, brant, geese, swan, coot, gallinules, sora, other rails, including Virginia, King and Clapper rails, plovers, snipe, woodcock and yellowlegs.

(c) *Game animals.*—Bear, deer, elk, fox, rabbit and squirrel.

(d) *Fur-bearing animals.*—Beaver, mink, muskrat, opossum, otter and raccoon.

(e) *Predatory or undesirable species of birds and animals.*—Blackbird, buzzard, crow, English sparrow, hawk, jaybird, owl and starling, weasel, wildcat, skunk and all other wild animals not otherwise classed as game or fur-bearing animals; provided, however, that hawks and owls shall be so classed only when a landowner or his agent considers it necessary to kill these species to protect from destruction his poultry or the game birds on his property, or when the board of supervisors of a county considers it necessary to permit the killing of these species to protect poultry or game birds in such county.

§ 29-135. It shall be lawful to hunt wild birds and wild animals named in the following sections of this article, within the daily and season bag limits, if any, during the open seasons provided, including the first and last days thereof, as promulgated by ~~Commissioner~~ Board regulations; provided that nothing in this section shall affect the operation of any local ordinances or acts heretofore or hereafter enacted.

§ 29-136. Nonmigratory game birds.—The following nonmigratory game birds may be hunted during the open seasons prescribed in § 29-135; provided that nothing in this section shall affect the operation of any local acts heretofore or hereafter enacted:

Grouse.

Pheasant, ring-necked only.—The ~~Commissioner~~ Commissioner may issue a permit to raise or purchase pheasants which shall entitle the permittee to release pheasants raised or purchased by him on land owned

or leased by him, and such pheasants may be hunted under rules and regulations promulgated by the ~~Commission~~ Board.

Birds introduced by the ~~Commission~~ Department.

Quail.—The ~~Commission~~ Commissioner may open the season on pen-raised quail on controlled shooting areas operated under Chapter 4 (§ 29-38 et seq.) of this title under rules and regulations as may be promulgated by the ~~Commission~~ Board.

Turkey.

Clapper rail.

§ 29-137. Migratory game birds.—Migratory game birds may be hunted in accordance with regulations of the ~~Commission~~ Board, which regulations shall conform to the regulations of the United States government insofar as open seasons and bag limits are concerned.

§ 29-143. Unlawful to hunt, trap, possess, sell or transport wild birds and wild animals except as permitted.—Unless and until otherwise provided by a regulation of the ~~Commission~~ in accordance with the provisions of law, the following shall be unlawful:

(a) To hunt or kill any wild bird or wild animal, including any predatory or undesirable species, with a gun, firearm and/or other weapon on Sunday, which is hereby declared a rest day for all species of wild bird and wild animal life.

(b) To destroy or molest the nest, eggs, dens or young of any wild bird or wild animal, except predatory or undesirable species, at any time without a permit as required by law, provided that wild animals may be dug out of dens in accordance with regulations of the ~~Commission~~ Board.

(c) To hunt or attempt to kill or trap any species of wild bird and/or wild animal after having obtained the daily bag or season limit during such day or season.

(d) To occupy any baited blind or other baited place for the purpose of taking or attempting to take any wild bird or wild animal or to put out bait or salt for any wild bird or wild animal for the purpose of taking or killing the same unless permitted by a regulation of the ~~Commission~~ Board, except that this shall not apply to baiting predatory or undesirable species of animals and birds, or to baiting traps for the purpose of taking furbearing animals that may be lawfully trapped.

(e) To kill or capture any wild bird or wild animal adjacent to any area while a field or forest fire is in progress.

(f) To shoot and/or attempt to take any wild bird or wild animal from an automobile or other vehicle.

(g) To hunt or track woodcock or nonmigratory game birds or game animals in the snow, either on or off one's own lands, except as permitted by regulations of the ~~Commission~~ Board; provided that landowners may kill rabbits in the snow on their lands for their own personal use.

(h) To set a trap of any kind on the lands or waters of another without attaching the name and address of the trapper thereto.

(i) To set a trap where it would be likely to injure persons, dogs, stock or fowl.

(j) To fail to visit all traps once each day and remove all animals caught therein, and forthwith report to the landowner as to stock, dogs or fowl caught therein and the date.

(k) To hunt, trap, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried, by any means whatever, receive for shipment, transportation or carriage, or export, or import, at any time or in any manner, any wild bird or wild animal or the carcass or any part thereof, except as specifically permitted by law

and only by the manner or means and within the numbers stated.

§ 29-144. Unlawful to kill male deer unless antlers visible above the hair.—It shall be unlawful to kill male deer in any county of this State unless such deer shall have antlers visible above the hair; provided that in any area in which the ~~Commission~~ Board declares an antlerless season, male deer may be killed in such area without regard to the length of antlers.

§ 29-145.1. Killing of deer damaging fruit trees or crops or creating a hazard to aircraft.—Whenever it is found that deer are damaging fruit trees or crops in the State, the owner or lessee of the lands on which such damage is done shall immediately report such fact to the local game warden for investigation. If after investigation the game warden finds that deer have so injured the fruit trees or crops of such owner or lessee as to cause damage, he shall authorize in writing, the owner, lessee or any other person designated by the game warden to kill such deer when they are found upon the land upon which the damages occurred.

Whenever it is found that deer are creating a hazard to the operation of any aircraft or to the facilities connected with the operation of aircraft, the person or persons responsible for the safe operation of such aircraft or facilities shall report such fact to the local game warden for investigation. If after investigation the game warden finds that deer have so created such hazard, he shall authorize such person or persons, or their representatives, to kill such deer when they are found to be creating such a hazard.

The carcass of every deer so killed shall be delivered by the owner or lessee to the local game warden, who shall deliver it to such charitable institution or hospital as designated by the ~~Commission of Game and Inland Fisheries~~ Board; provided, however, that any deer so killed in any year shall, upon request, be awarded by the game warden to the owner or lessee, who shall give such person a certificate to that effect on forms furnished by the ~~Commission of Game and Inland Fisheries~~ Commissioner. Any person awarded a deer under this section may make use thereof as if the same had been killed by him during the season therefor.

§ 29-145.2. Hunting and killing antlerless deer.—(1) Under such conditions and within such dates and areas as may be determined and prescribed by the ~~Commission of Game and Inland Fisheries~~ Board, for the purpose of selective population control, a special permit in addition to other licenses and stamps required, may be issued to authorize the holder thereof to hunt and kill antlerless deer.

(2) For the purpose of carrying out the provisions of this section, the ~~Commission~~ Commissioner shall print or cause to be printed special permits in suitable design and place the same in the hands of clerks and agents authorized to sell hunting licenses.

(3) The applicant for a permit as provided herein shall pay to the clerk or agent issuing such permit a fee of two dollars, twenty cents of which shall constitute the fee of the clerk or agent, and the remainder thereof shall be deposited in the county treasury of the county in which issued and shall be deposited to the credit of a special fund in the said county to be used, subject to the approval of the ~~Commission~~ Commissioner, for the benefit of game restoration in the county.

§ 29-146. Open and closed season for trapping, bag limits, etc.—There shall be a continuous open season for trapping predatory or undesirable species of wild birds and wild fur-bearing animals and a continuous closed trapping season on all other species of wild birds and wild animals, except as provided by ~~Commission~~ Board regulations.

(a) The trapper shall be responsible for all damage done by his traps and any person finding a trap set contrary to law may destroy the

same.

(b) A landowner may trap fur-bearing animals, except beaver, muskrat and raccoons, upon his own land during closed season.

(c) Licensed trappers may shoot wild animals caught in traps during the open hunting season if such trapper has license to hunt.

(d) It shall be lawful to trap wild animals within the daily bag and season limits, if any, during the open season provided, including the first and last days thereof, as provided by ~~Commission~~ *Board* regulations.

§ 29-148. Unlawful to take or attempt to take, possess, sell or transport fish except as permitted.—Unless and until otherwise provided by a regulation of the ~~Commission~~ *Board*, after a public hearing, in accordance with the provisions of this title, it shall be unlawful for any person to take or attempt to take any fish in inland waters other than shad, herring or mullet, except by fishing with a hook and line or rod and reel, held in the hand, or to catch, trap, take, capture, kill, or attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried, by any means whatever, receive for shipment, transport or carriage, or export, or import at any time or in any manner any species of bass or trout, or the carcass of any part thereof, except as specifically permitted by this article and only by the manner or means and within the numbers stated; except that in the counties of Mecklenburg, Pittsylvania, Prince Edward, city of Danville, Charlotte, Campbell, Halifax, Amelia (except between Vaughn's pond and Meadsville Dam), Caroline and King George and in the Meherrin River in Lunenburg County it shall be lawful to fish with "fish traps" or "fish pots" and haul seines in any and all streams and waters, provided that no person shall catch fish with "fish traps" or "fish pots" and haul seines to be sold; and provided further, that it shall be unlawful in any and all of such counties to remove from the waters thereof any bass, perch and trout caught with fish pots or fish traps or haul seines, and any person so catching bass, perch and trout shall immediately return the same to the waters. The ~~Commission~~ *Board* shall have the authority *upon recommendation of the Commissioner* to close any streams or rivers or parts of streams or rivers in such counties when same shall be stocked with fish by the ~~Commission~~ *Department*. Any provisions of this title to the contrary notwithstanding, it shall be lawful to sell or offer to sell for human consumption trout which have been lawfully acquired provided such trout have been propagated and raised in a hatchery or by other artificial means.

The ~~Commission of Game and Inland Fisheries~~ *Board* shall by appropriate regulation establish a practical system of identification of trout so offered for sale for table use.

A violation of the provisions of this section or regulations based thereunder shall be declared a misdemeanor punishable by a penalty as provided by law.

§ 29-150. Open season; method of taking bass and trout.—The open season during which it shall be lawful to take any species of bass and trout from the inland waters of this State, but only by angling with hook and line, attached to a rod or pole, either with or without a reel, and with or without the aid of a hand landing net, including the first and last days thereof, shall be as promulgated by ~~Commission~~ *Board* regulations.

Bass, including rock bass and redeye.

Trout, any species.—The owner, or lessee, of any private pond stocked by himself, or by the ~~Commission~~ *Department or its predecessor agencies* not less than three years prior thereto, may capture any fish therefrom for his own use at any time; provided that nothing in this section shall

affect the operation of any local acts heretofore or hereafter enacted.

§ 29-151. Dams and fish ladders; inspection of.—Any dam or other thing in a watercourse, which obstructs navigation or the passage of fish, shall be deemed a nuisance, unless it be to work a mill, manufactory or other machine or engine useful to the public, and is allowed by law or order of court. Any person owning or having control of any dam or other obstruction in any of the streams of this State above tidewater which may interfere with the free passage of fish, shall provide every such dam or other obstruction with a suitable fish ladder, so that fish may have free passage up and down the streams during the months of March, April, May and June of each year, and maintain and keep the same in good repair, and restore it in case of destruction; provided, however, that this section shall not apply to the Meherrin River within the counties of Brunswick and Greenville, nor to the Meherrin River within or between the counties of Lunenburg and Mecklenburg, nor to the Nottoway River between the counties of Lunenburg and Nottoway, nor to Abram's Creek in Shawnee district, Frederick County, nor to the James River between the counties of Bedford and Amherst, nor any streams within the counties of Augusta, Lunenburg, Mecklenburg, Louisa, Buckingham, Halifax, Montgomery, Pulaski, Franklin, Russell, Tazewell, Giles, Bland, Craig, Wythe, Carroll and Grayson, nor to that part of any stream that forms a part of the boundary of Halifax and Franklin Counties; provided, however, that no fish ladders shall be required on dams twenty feet or more in height or on such dams as the ~~Commission Board~~, *by regulations*, may deem it unnecessary on which to have ladders. Any person failing to comply with this provision shall be fined one dollar for each day's failure; and the circuit court of the county or the corporation court of the city in which the dam is situated, after reasonable notice, by rule or otherwise, to the parties or party interested and upon satisfactory proof of the failure, shall cause the fishway to be constructed, or put in good repair as the case may be, at the expense of the owner of the dam or other obstruction. It shall be the duty of the game warden to make a personal inspection of dams and rivers in his respective county or city in the months of April and October of each year and report to the circuit court of the county or the corporation court of the city any violation of this section.

§ 29-153.2. Reciprocal agreement as to fishing in such waters.—The ~~Commission of Game and Inland Fisheries~~ *Commissioner, with approval of the Board*, shall have the necessary power and authority to enter into a reciprocal agreement with an adjoining state having nontidal waters lying and being adjacent to Virginia land or water relating to the following:

(a) Recognition of a resident sport fishing license acquired in an adjoining state when it is used by the resident of such state, whose name appears on the face of such license, when such licensee is fishing in that portion of said nontidal waters lying and being situated in either the State of Virginia or such other state or partly in each of such states. Such recognition shall be contingent upon a like recognition of said adjoining state giving such recognition to a resident licensee of the State of Virginia while such licensee is fishing in that portion of such nontidal waters lying and being situated in either such adjoining state or the State of Virginia or partly in each of such states.

(b) State creel limits, open seasons for fishing and all other laws and regulations of the state entering into such agreement shall be strictly observed, and failure of any person to comply with the rules and regulations set up under such agreement shall be a misdemeanor and punished accordingly.

§ 29-154. Sale.—When taken in accordance with the provisions of law or regulation, bear, muskrat, opossum, rabbits, raccoon and squirrels

may be bought and sold during the open hunting season only, but the hides, furs or pelts of fur-bearing animals legally taken and possessed may be sold at any time. The ~~Commission~~ *Commissioner* is empowered to permit the sale of Mongolian and English ring-necked pheasants raised in captivity for breeding or table use under such regulations as ~~it~~ *the Board* may prescribe. The violation of any such regulation shall be a misdemeanor punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars.

§ 29-155.3. Procedure to be followed by driver.—The person so killing or injuring any deer shall, if the deer be not killed at once, kill the same and forthwith take the carcass to the game warden, trial justice or a justice of the peace of the county. The game warden, trial justice or justice of the peace shall view the deer and if he believes that the deer was killed by collision with the motor vehicle or injured to such extent thereby as to require its death he shall award the same to the person so claiming the deer, and shall give such person a certificate to that effect on forms furnished by the ~~Commission of Game and Inland Fisheries~~ *Commissioner*.

§ 29-158. Importation.—Live wolves or coyotes, or birds and animals otherwise classed as predatory or undesirable, may not be imported into this State, or liberated therein, except under a special permit of the ~~Commission~~ *Department*. Nonpredatory birds, animals or fish may be imported, but upon arrival in this State, shall be subject to the laws governing the possession of such birds, animals and fish in Virginia. A returning licensed hunter or fisherman may bring into this State, either in his personal possession or as his baggage, on the same conveyance with him, exposed to view and plainly labeled or tagged with his name and address, game and fish legally taken in another state, but limited to the quantity he could legally take in one day in Virginia. Nothing herein shall be construed as applying to birds, animals and fish being transported in unbroken packages from beyond the confines of this State through the same to another state.

§ 29-158.1. Game and fish taken and packaged outside State.—Any provision of this chapter or any regulation heretofore or hereafter adopted by the ~~Commission~~ *Board* to the contrary notwithstanding, it shall be lawful to possess, store, transport, offer for sale, sell, offer to purchase, purchase and otherwise deal in any wild animal, bird, fish or any part thereof, which has been taken and packaged in a can, tin, pot or other receptacle outside this State by any person, company or corporation duly licensed by the State in which such cannery or processing plant is located and certified to the ~~Commission of Game and Inland Fisheries~~ *Commissioner* of such license, and transported into this State, so long as the original can, tin, pot or other receptacle in which such animal, bird, fish, or any part thereof was originally packaged and came into this State remains unbroken, unopened and intact.

§ 29-158.2. Dressing, packing and selling of bobwhites, quail or partridges by shooting-preserve licensees.—Any provision of this chapter or any regulation heretofore adopted by the ~~Commission~~ *Board* to the contrary notwithstanding, it shall be lawful for the licensee of a shooting preserve or his designated agents to dress, pack and sell bobwhites, quail or partridges, raised by him for use as food, under rules or regulations to be prescribed by the ~~Commission~~ *Board*.

§ 29-162. Killing elk and deer illegally.—Any person killing an elk which does not have antlers visible above the hair, or who exceeds the bag limit for elk, or who kills an elk during the closed season, and any person killing a deer in violation of the ~~Commission's~~ *Board's* regulations, or who exceeds the bag limit for deer, or who kills a deer during the closed

season shall upon conviction be fined not less than twenty-five dollars nor more than two hundred and fifty dollars. Provided, that the fine for killing an elk which does not have antlers visible above the hair, or an illegal deer during the open season shall be one hundred dollars for such elk and twenty-five dollars for such deer if such person immediately delivers the complete carcass in good condition to the game warden of the county in which killed, whereupon it shall be confiscated and disposed of by the game warden or as otherwise provided, and that such person so delivering such carcass to the game warden shall be exempt from the replacement cost as provided in § 29-163.1.

§ 29-171. Violation of sanctuaries, refuges, preserves and water used for propagation.—It shall be unlawful for any person, including the owner, to trespass or hunt upon a privately owned State game sanctuary or permit his dog to do so; to violate any regulation of the ~~Commission Board~~ concerning refuges, sanctuaries and public shooting or fishing preserves in impounded waters or in forest and watershed areas owned by the United States government or to damage the boundary enclosure of or enter a game refuge owned, leased, or operated by the ~~Commission Department~~ for the purpose of molesting any bird or animal, or permit his dog or livestock to go thereon, or fish or trespass with intent to fish upon any waters or lands being utilized for fish propagation, or damage or destroy any pond, pool, flume, dam, pipeline, property or appliance belonging to or being utilized by the ~~Commission Department~~, or interfere with, obstruct, pollute, or diminish the natural flow of water into or through a fish hatchery. Any person convicted of any offense hereunder shall be deemed guilty of a misdemeanor and he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars or be sentenced to jail not exceeding sixty days, either, or both, and shall be responsible for all damage; provided, however, that the minimum fine for permitting a dog to go on a sanctuary or refuge shall be five dollars.

§ 29-172. Unlawful devices to be destroyed.—Any gun, trap, net, or other device of any kind or nature for taking wild birds, wild animals, or fish, except as specifically permitted in this title, or by a regulation of the ~~Commission Board~~, shall be considered unlawful and, upon satisfactory evidence of the guilt of the owner or user and of the unlawful nature of the article seized, the trial court shall fine the owner or user not less than twenty-five nor more than two hundred fifty dollars and forfeit such device to the Commonwealth, whereupon it shall be destroyed by the game warden. If the owner or user of such article cannot be located within thirty days, the game warden shall destroy the same. The possession of any gun, trap, net, or other device not permitted by law to be used, under circumstances which may be deemed suspicious, shall be prima facie evidence of the guilt of the person in whose possession the same is found. Unlawful fixed devices may be destroyed by the game warden at the place where the same are found.

The owner or user of any automatic-loading or hand-operated repeating shotgun possessed or used in violation of the provisions of this Code or regulations of the ~~Commission Board~~ shall be subject to a fine of not less than ten nor more than one hundred dollars, but such gun shall not be destroyed; before any such gun shall be returned to the owner or user the game warden shall make such gun conform to this Code and regulations of the ~~Commission Board~~ applicable thereto, at the expense of the owner.

§ 29-173. Confiscation of wild birds and animals under certain circumstances; disposition.—Wild birds, wild animals and fish are the property of the State and may be reduced to personal possession only in accordance with law. Upon satisfactory evidence of the illegal taking,

possession, sale or purchase, or transport or import of any wild bird, wild animal or fish, the trial court shall forfeit the same to the Commonwealth. The game warden shall deliver the same to some charitable institution or hospital, as the ~~Commission~~ *may direct Board may designate*.

§ 29-177. Attorney for the Commonwealth to prosecute.—An attorney for the Commonwealth, when so requested by the trial court or agent of the ~~Commission~~ *Commissioner*, shall prosecute an offender for violating the game, inland fish and dog laws, for which services he shall be allowed the fees provided by law for misdemeanor prosecution.

§ 29-179. Report of prosecution.—Every court or clerk of any court before which any prosecution under the game, inland fish or dog laws is commenced or shall go on appeal shall, within five days after trial or dismissal, report in writing whether the defendant was adjudged guilty or not guilty, and the penalty or requirement, if any, to the ~~Commission~~ *Commissioner*. For the failure of any court or clerk to comply with this provision, he shall forfeit to the Commonwealth the sum of five dollars in each case, such sum to go to the credit of the Literary Fund.

§ 29-181. Self-incrimination.—No person shall be excused from testifying for the Commonwealth as to any offense committed by another under the provisions of the ~~game, inland fish and dog laws this title~~ by reason of his testimony tending to incriminate himself, but the testimony given by any such person on behalf of the Commonwealth when called as a witness for the prosecution shall in no case be used against him nor shall he be prosecuted as to the offense to which he has testified.

§ 29-184.5. Disposition of dog fund in certain cities; fixing amount of tax by ordinance.—(a) In any city which has, by agreement with the ~~Commission~~ *Department*, taken over the enforcement of the dog laws within such city the funds collected for dog license taxes shall be paid into a special fund and may be disposed of as provided in §§ 29-206 and 29-209; provided, however, that the city treasurer shall not be required to remit any portion of such funds to the State Treasurer.

(b) In such city the amount of the dog license tax, which may be, but in no event shall exceed, five dollars per dog, shall be fixed by ordinance adopted by the governing body of such city, and thereafter the tax imposed under § 29-184 shall not apply therein.

§ 29-189. What dog license shall consist of.—A dog license shall consist of a license receipt and a metal tag of a style and design adopted by the ~~Commission~~ *Board* and used by every county and city during each year. The tag shall be stamped or otherwise permanently marked to show the sex of dog, the calendar year for which issued and bear a serial number. The license tag for a kennel shall show the number of dogs authorized to be kept under such license and have attached thereto a metal identification plate for each of such dogs, numbered to correspond with the serial number of the license tag.

§ 29-192. Regulating kennel dogs.—The owner of a kennel shall securely fasten the license tag to the kennel enclosure in full view and keep one of the identification plates provided therewith attached to the collar of each dog authorized to be kept enclosed in the kennel. Any identification plates not so in use must be kept by the owner or custodian and promptly shown to any game warden or other officer upon request. A kennel dog shall not be permitted to stray beyond the limits of the enclosure, but this shall not prohibit removing dogs therefrom temporarily while under the control of the owner or custodian for the purpose of exercising, hunting, breeding, trial or show. The ~~Commission~~ *Commissioner* may, in ~~its~~ *his* discretion, issue a permit allowing kennel dogs to run at large during such months as it may deem proper; provided, that such permit shall not authorize such dogs to run at large contrary to acts of local application

and county, city and town ordinances. Every permit shall state the months that such dogs may run at large and the rules and regulations that must be complied with and the ~~Commission~~ *Commissioner* may revoke any such permit at any time. Forms of application blanks and permits shall be supplied by the ~~Commission~~ *Commissioner*. A kennel shall not be operated in such a manner as to defraud the county or city of the license tax applying to dogs which cannot be legally covered thereunder or to in any manner violate other provisions of this chapter.

§ 29-199. Killing unlicensed dogs.—It shall be the duty of the game warden to kill any dog of unknown ownership found running at large on which license has not been paid; provided, that the game warden may deliver such dog to any person in his county or city who will pay the required license fee on such dog, with the understanding that should the legal owner thereafter claim the dog and prove his ownership, he may recover such dog by paying to the person to whom it was delivered by the game warden, the amount of the license fee paid by him and a reasonable charge for the keep of the dog while in his possession. Any person, game warden or other officer killing a dog under this chapter shall burn or bury the same. Game wardens in cities shall receive two dollars and fifty cents for each dog killed by them under the provisions of this chapter. Bills for such compensation shall be rendered by each game warden entitled to receive them to the city council or such other governing body thereof as may be authorized to pass upon, approve and order to be paid bills against such city. In any city having a city manager form of government the council or other governing body thereof may provide that such bills be rendered the city manager with authority to pass upon, approve and order the same paid. Every bill shall be verified under oath of the warden presenting the same, and when it shall appear that the account is correct, the same shall be forthwith ordered paid from the dog license fund of such city; provided, however, that the governing authority of any city and the ~~Commission~~ *Commissioner* may enter into such contract as they may agree upon for the killing of dogs, whereupon such city shall be relieved of paying the fees provided in this section therefor.

§ 29-204. Treasurers ordering tags; sale to begin November first.—Treasurers shall order from the ~~Commission~~ *Commissioner*, not later than April first of each year, a sufficient supply of such tags for the calendar year following, which the ~~Commission~~ *Commissioner* shall furnish not later than November first. Dog tags for each calendar year shall be sold in serial and numerical order, beginning November first of the prior year and shall remain on sale until December thirty-first of the calendar year covered by such tags.

§ 29-205. List of dog license sales and disposition thereof, etc.—The treasurer shall enter in a dog license sales record book, containing original perforated and duplicate leaves, the date of sale of dog tag and kennel license, the names and addresses of persons to whom sold, the kind of tag or kennel, the serial number and the amount of the license tax paid. The treasurer shall tear the original perforated sheets from his dog license sales record book monthly of all persons who bought dog tags, and deliver the same to the game warden of his county or city on or before the fifth day of the succeeding month. In supplying such list, this chapter shall be construed to have been complied with upon delivery to the warden in person, or when the same is deposited in the United States mail, duly registered and properly addressed to the warden. The ~~Commission~~ *Commissioner* shall furnish standard uniform receipts, dog license sales record books and necessary tags to the treasurer of each county and city which he shall use as directed. Upon the receipt of the bill therefor such treasurer shall pay the amount thereof into the State treasury within thirty days after

date of shipment.

§ 29-207. Quarterly reports.—The treasurer of any county or city which does not enforce the dog laws shall report to the Comptroller on a form provided by him, at the time of making remittance to the State treasury, a classified list of dog licenses sold, the quantity of each kind and the serial numbers thereof, the gross amount received therefor, the amount of fifteen per centum remitted and the number of tags of each kind on hand unsold at the close of the quarter. Upon receipt into the treasury of such sums the Comptroller shall pass the same to the credit of the game protection fund. A copy of the report made to the Comptroller shall be sent to the ~~Commission~~ Commissioner.

§ 29-208. Unsold tags to be returned; annual report.—On December thirty-first of each year, or within ten days thereafter, the treasurer of any county or city which does not enforce the dog laws shall return prepaid to the ~~Commission~~ Commissioner by registered or insured mail, or prepaid freight or express, all unsold tags of the calendar year and make an annual report of receipts and disbursements of the dog license fund to the ~~Commission~~ Commissioner, which shall show the amount on hand from the previous report, the number of license tags issued for male, unsexed female, female and kennel and the amount received for same or from any other source during the calendar year; an itemized statement of the amount disbursed and for what purpose and the amount remaining on hand at the close of the calendar year. The accounts and reports shall be made separately for the tags of each calendar year.

§ 29-208.1. Authority to provide by ordinance for licensing of dogs in certain counties and cities.—The governing body of any county or city which has assumed responsibility for enforcement of the dog laws under §§ 29-184.2 or 29-184.5 within such county or city, may, by ordinance provide a method of obtaining licenses and tags of a type which shall be described by the ordinance. Such tags may be of a uniform type, without regard for the sex of the dog and the tax may be the same on all dogs, male, female or unsexed. The ordinance shall also provide a method of keeping lists, keeping accounts, how reports are to be made and how unsold tags are to be disposed of. Insofar as such counties or cities are concerned, the ~~Commission~~ Commissioner shall not be controlled by the provisions of §§ 29-189 and 29-204 through 29-208.

§ 29-209. Disposition of dog fund.—After paying the fifteen per centum on gross collections to the State Treasurer as otherwise provided, the remaining amount in the dog fund of the county or city shall first be used to pay for control of rabies, treatment of persons for rabies, advertising notices, freight and express or postage, and if the remainder is sufficient, all damages to livestock or poultry, and if the governing body of the county so desires it may make therefrom an allowance to the game warden for services, and all allowances and payments heretofore made by the governing body of any county to game wardens and ex officio game wardens for services are hereby validated. In the event the remainder is not sufficient to pay such damages, the claims shall be filed and paid in the order of presentation out of the first available money coming into the fund.

In the county of Orange, the governing body may employ, and pay from the dog fund, a person or persons to investigate claims made for payment under this section.

Should there not be a sum sufficient in the dog fund of the counties of Augusta, Bedford, Rockbridge, Smyth, Prince William, Wythe, or Albemarle, respectively, to defray all costs in such county, including the payment of claims as provided in § 29-202, then the governing body of such county may appropriate a sufficient amount from the general fund of such county to provide payment of such costs and claims.

Any funds in excess of two hundred fifty dollars remaining in the

hands of the treasurer on December thirty-first may on that date be transferred into the general fund of the county or city, or at the discretion of the governing body of any county or city, any portion thereof may be transferred into a special fund and used for the purpose of replenishing or restocking quail or other game in such county or counties adjoining such city; provided, that in the counties of Giles, Franklin, Pittsylvania, Dinwiddie and Wythe and the city of ~~Warwick~~ *Newport News*, the entire fund remaining in the hands of the treasurer on December thirty-first shall be transferred by the governing body into a special fund and, subject to the approval of the ~~Commission~~ *Board*, shall be used for the purpose of replenishing, restocking and protecting quail or other game and game fish in the county; provided, that in the county of Giles the governing body shall transfer the entire fund remaining in the hands of the treasurer on December thirty-first of each year into a special fund to be used for the purpose of replenishing or restocking and protection of quail and other game and game fish in the county, and in the county of Essex the governing body shall likewise transfer the sum of two hundred fifty dollars, as above provided, for the same purpose of replenishing or restocking and protection of quail and other game and game fish in the county; provided, that in the county of Wythe and the city of ~~Warwick~~ *Newport News* the special fund or any portion thereof not so expended at the expiration of two years from the date of its transfer as such special fund shall revert to the general fund of the county or city, respectively, and in the discretion of the governing body be apportioned as next herein provided.

In the discretion of the governing body of the respective counties, the fund remaining in such county may be apportioned between the county and any incorporated town or towns in such county in the proportion that the amount of the license tax collected in the town or towns bears to the total dog license tax in the county in which the town or towns are located, to be used as the governing body of the town directs, except that in the county of Essex no apportionment shall be made to the town of Tappahannock and that in the county of Middlesex no apportionment shall be made to the town of Urbanna.

Any funds heretofore set aside in the county of Grayson for the purpose of replenishing, restocking and protecting quail or other game and game fish in the county may, by order of the governing body of the county, be transferred to the general fund of the county.

In the counties of Buchanan and Dickenson, the entire fund remaining in the hands of the treasurer on December thirty-first shall be transferred by the governing body into a special fund and subject to the approval of the ~~Commission of Game and Inland Fisheries~~ *Board* shall be used for the purpose of replenishing, restocking and protecting game birds and game animals and game fish in the counties.

In the county of Montgomery, seventy-five per centum of the entire fund remaining in the hands of the treasurer on December thirty-first shall be transferred by the governing body into a special fund and shall be used for the purpose of replenishing, restocking and protecting game birds and game animals and game fish in such county as the governing body shall see fit.

§ 29-210. Permits for field trials.—The ~~Commission~~ *Commissioner* is authorized to grant permits in ~~its~~ *his* discretion to bona fide field trial clubs and associations to hold field trials with dogs at such times and under such regulations as it may deem proper, any provision of paragraphs (b) through (k) inclusive of § 29-143 to the contrary notwithstanding, and it shall be unlawful to hold such trials without the permit herein authorized during the closed season for game. If wild game is to be shot over or in front of dogs engaged in such field trials, the person actually doing the shooting must have a license permitting him to do so,

which, in the event that he is a resident of this State, shall be a license issued under § 29-54. A nonresident of this State participating in such trials may be issued a special permit authorizing him to do so extending for a period of not more than thirty days for which a fee of five dollars shall be charged.

§ 29-211. Permits for night trials.—Permits may be granted by the ~~Commissioner~~ *Commissioner*, or by the ~~director thereof~~ *his agent*, or by a game warden, to individuals for trials with dogs used and trained, or to be trained, for hunting at night, between September tenth and October first of any year; provided, however, that no person accompanying such dogs on trial shall carry or have with him any firearm or axe.

§ 29-212. Permits to allow foxhounds to run at large.—The ~~Commissioner~~ *Commissioner* is authorized to issue permits to legal residents of this State who are bona fide owners of foxhounds, actually used for fox hunting, on which the kennel tax required by law has been paid, allowing such owners to permit such foxhounds to run at large at any time, whether or not accompanied by the owner or his agent; and it shall be lawful for such foxhounds, to the owners of which such permits have been issued, to run at large at any time, whether accompanied by the owner or his agent or not, provided that not more than thirty foxhounds may be kept under such permit as is provided in this chapter; provided, however, that the counties of Fauquier, Rockingham, Craig, Shenandoah, and Rappahannock be excluded from the provisions of this section.

§ 29-213.1. Regulation of State Health Commissioner declaring existence of rabies; display and publication.—Whenever the State Health Commissioner is informed that an outbreak of rabies has occurred in a county or city, he may, after consulting with the Commissioner of Agriculture and Immigration and the ~~Executive Director of the Commission of Game and Inland Fisheries~~ *Commissioner of the Department of Conservation, Development and Natural Resources*, adopt a regulation declaring the existence of rabies in such county or city and containing such requirements as are hereinafter set forth. Such regulations shall be prominently displayed throughout the county or city and shall be published therein by signs or otherwise to call the attention of the public to the existence of such outbreak.

§ 29-232. Taking, transportation, sale, etc., of endangered species prohibited.—Notwithstanding any other provision of law, the taking, transportation, processing, sale, or offer for sale within this State of any fish or wildlife presently appearing on any of the following lists is prohibited, except as provided in § 29-236: (i) the United States' List of Endangered Foreign Fish and Wildlife (Part 17 of Title 50 of the Code of Federal Regulations, Appendix A); (ii) the United States' List of Endangered Native Fish and Wildlife (Part 17 of Title 50 of the Code of Federal Regulations, Appendix D); and (iii) the list of endangered fish or wildlife in Virginia as determined by the ~~Commission~~ *Board of the Division* of Game and Inland Fisheries.

§ 29-233. Modification of federal lists of endangered species; addition of species not on federal lists.—In the event the federal lists are hereafter modified by additions or deletions, such modifications shall be accepted as binding under § 29-232. The ~~Commission~~ *Board* may, on its own motion, declare by regulation that species in this State not appearing on the federal lists are threatened with Statewide extinction.

§ 29-234. Regulations.—The ~~Commission~~ *Board* is authorized to issue regulations to implement the provisions of this chapter.

§ 29-235. Penalties; authority of game wardens and police officers; disposition of property seized.—(a) Any person who violates the provisions of § 29-232, or any regulations issued pursuant thereto, or whoever violates any regulation or permit issued under § 29-236, shall be punished by a fine of not more than one thousand dollars, or imprisonment

not to exceed six months, or both.

(b) Notwithstanding the provisions of § 29-13, any game warden, or any police officer of this State or of any county, city or town within this State, shall have authority to execute a warrant to search for and seize any goods, business records, merchandise or fish or wildlife taken, employed or used in connection with a violation of any provision of this chapter. Any game warden or other police officer may, without a warrant, arrest any person who such officer has probable cause to believe is violating, in his presence or view, any such provision, or any regulation or permit provided for by this chapter. An officer who has made an arrest of a person in connection with any such violation may search such person or business records at the time of arrest and seize any fish or wildlife, records, or property taken, used or employed in connection with any such violation.

(c) Goods, merchandise, fish or wildlife or records seized provisions of subsection (b) of this section shall be held by an officer or agent of the ~~Commission~~ Commissioner pending disposition of court proceedings, and thereafter be forfeited to the State for destruction or disposition as the ~~Commission~~ Commissioner may deem appropriate; provided, that, prior to forfeiture, the ~~Commission~~ Commissioner may direct the transfer of fish or wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping, costs assessable to the defendant. The ~~Commission~~ Board is authorized to issue regulations to implement this section.

§ 29-236. The ~~Commission~~ Board may, by regulation, permit the taking, exportation, transportation or possession of any fish or wildlife which is listed by the provisions of this chapter, for zoological, educational, or scientific purposes and for propagation of such fish or wildlife in captivity for preservation purposes, wherever such exportation, possession, transportation, or taking is permitted under federal law, regulation, or permit.

§ 45.1-180. Definitions.—The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section except where the context clearly requires a different meaning:

(a) *Mining*.—Means the breaking or disturbing of the surface soil or rock in order to facilitate or accomplish the extraction or removal of minerals, ores, rock or other solid matter; any activity constituting all or part of a process for the extraction or removal of minerals, ores, rock or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction. Nothing herein shall apply to strip mining of coal.

(b) *Disturbed land*.—The areas from which overburden has been removed in any mining operation, plus the area covered by the spoil, plus any areas used in such mining operation which by virtue of their use are susceptible to excess erosion. Access roads constructed as fire breaks whose purpose is primarily for fire fighting are excluded from this definition, but the banks thereof are included.

(c) *Overburden*.—All of the earth and other material which lie above a natural deposit of minerals, ores, rock or other solid matter and also other materials after removal from their natural deposit in the process of mining.

(d) *Spoil bank*.—A deposit of removed overburden.

(e) *Operator*.—Any individual, group of individuals, corporation, partnership, business trust, association or any legal entity which is engaged in mining and which disturbs more than one acre of land or removes, or intends to remove, more than five hundred tons of minerals, ores or

other solid matter in any twelve-month period from any such land by such mining operation.

(f) ~~Director~~ Commissioner.—The ~~Director~~ Commissioner of the Department of Conservation, and Economic Development and Natural Resources.

(g) Department.—The Department of Conservation, and Economic Development and Natural Resources.

(g1) Board.—The Natural Resources Board.

~~(h) Division.—The Division of Mines of the Department of Labor and Industry.~~

~~(i) Chief.—The Chief of the Division of Mines.~~

(j) Mining operation.—Any area included in an approved plan of operation.

§ 45.1-180.1. *The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision of the Environmental Coordination Act of 1973 shall control.*

§ 45.1-181. Permit required; fee; duration; application; approval by Department.—It shall be unlawful for any operator to engage in any mining operation in this State, without having first obtained from the ~~Division~~ Department a permit to engage in such operation and paying a fee therefor of six dollars per acre for every acre proposed to be disturbed, not to exceed the total sum of one hundred fifty dollars, which shall be deposited in the State treasury in a special fund to be used by the ~~Director~~ Commissioner in performing reclamations under the provisions of this chapter. Such permits shall not be transferable. A permit shall be obtained prior to the starting of any mining operation. A permit shall continue to be in effect if, within ten days ~~of~~ prior to the anniversary date of the permit the ~~Director~~ Commissioner, after inspection, is satisfied that the operation is proceeding according to the plan submitted to and approved by him. If the operator believes changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation which shall be approved by the ~~Director~~ Commissioner in the same manner as an original plan and shall be subject to the provisions of §§ 45.1-182 and 45.1-183 hereof. A separate permit must be secured for each mining operation conducted. Application for a mining permit shall be made in writing on forms prescribed by the ~~Chief~~ Commissioner and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to such other information as may be reasonably required by the ~~Chief~~ Commissioner shall contain the following information: (1) the common name and geologic title, where applicable, of the mineral, ore or other solid matter to be extracted; (2) a description of the land upon which the applicant proposes to conduct mining operations, which description shall set forth: the name of the county or city in which such land is located; the location of its boundaries and any other description of the land to be disturbed in order that it may be located and distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (3) the name and address of the owner or owners of the surface of the land; (4) the name and address of the owner or owners of the mineral, ore or other solid matter; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the

permit; (6) the total number of acres of land to be covered by the permit; (7) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (8) whether any mining permits of any type are now held by the applicant and the number thereof; (9) the name and address of the applicant, if an individual, the names and addresses of all partners, if a partnership, the state of incorporation and the name and address of its registered agent, if a corporation, or the name and address of the trustee, if a trust; and (10) if known, whether applicant, or any subsidiary or affiliate or any partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a mining permit of any type issued under the laws of this or any other state revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited.

The application for a permit shall be accompanied by two copies of an accurate map or plan and meet the following requirements:

- (a) Be prepared by a licensed engineer or licensed land surveyor;
- (b) Identify the area to correspond with the land described in the application;
- (c) Show adjacent deep mining, if any, and the boundaries of surface properties, with the names of owners of the affected area which lie within a hundred feet of any part of the affected area;
- (d) Be drawn to a scale of four hundred feet to the inch or better;
- (e) Show the names and location of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area affected and within five hundred feet of such area;
- (f) Show by appropriate markings the boundaries of the area of land affected, the outcrop of the seam at the surface or deposit to be mined, and the total number of acres involved in the area of land affected;
- (g) Show the date on which the map was prepared, the north arrow and the quadrangle name;
- (h) Show the drainage plan on and away from the area of land affected including the directional flow of water, constructed drainways, natural waterways used for drainage and the streams or tributaries receiving the discharge.

No permit shall be issued by the ~~Division~~ *Commissioner* until ~~it~~ *he* has received ~~approval in writing from the Department of the~~ *a satisfactory* plan of operation required in § 45.1-182 and the bond for the applicant as required in § 45.1-183.

§ 45.1-182. ~~At the time of filing an application for a permit,~~ *Each* operator shall file with the ~~Division~~ *Department* a plan of operation for the mining operations for which a permit is sought. The plan shall then be submitted to the ~~Director~~ *Commissioner* on a form to be prescribed by the ~~Director~~ *Commissioner* and shall contain such information as the ~~Director~~ *Commissioner* may require. The plan shall contain among other things an agreement by the operator to provide for the following in a manner satisfactory to the ~~Director~~ *Commissioner*:

- (1) Removal of metal, lumber and other debris resulting from mining operations.
- (2) Regrading of the area in a manner to be established by rules and regulations of the ~~Director~~ *Board*.
- (3) Grading the surface in such a manner as to preserve existent access truck roads and truck roads on and along the bench, and grading the surface on areas where truck roads do not exist in such a manner that serviceable truck roads may be constructed with minimum cost by persons other than the operator for the purposes of forest fire control or recreation.

(4) Grading loose soil, refuse and other debris on the bottom of the last cut so as to reduce the piles of such material in accordance with good conservation practices.

(5) Planting trees, shrubs, grasses or other plants upon the parts of such area where revegetation is practicable.

(6) Where the operator elects to impound water to provide lakes or ponds for wildlife, recreational or water-supply purposes, such operator shall file a formal request with the Department and obtain approval before such ponds or lakes can be created in impounding such water.

(7) In a plan of operation submitted by a dimensional stone quarry operator, the ~~Director~~ *Commissioner* shall give due consideration to the peculiar nature of the excavated cavity or cavities to be excavated contained in such plan.

§ 45.1-183. Bond of operator.—Each operator at the time of filing his application shall furnish bond on a form to be prescribed by the ~~Chief~~ *Commissioner* payable to the Department and conditioned that the operator shall faithfully perform all of the requirements of this chapter and of the plan of operation as approved and directed by the Department; except that any persons engaged in mining less than one acre per year on land of which he is owner in fee shall not be required to pay any bond. The amount of bond shall be fifty dollars per acre, based upon the number of acres of land which the operator estimates will be disturbed by mining operations during the next ensuing year. The minimum amount of bond furnished shall be one thousand dollars, except in areas of five acres or less the bond shall be two hundred dollars. Such bond shall be executed by the operator and by a corporate surety licensed to do business in this State; provided, however, that in lieu of such bond the operator may deposit cash or collateral security acceptable to the ~~Chief~~ *Commissioner*.

§ 45.1-184. Upon receipt of a reasonable plan of operation and bond prescribed above, the ~~Director~~ *Commissioner* shall review the plan and if it meets his approval ~~certify this fact to the Division~~ *issue a permit*. If the ~~Director~~ *Commissioner* disapproves the plan he shall furnish the applicant ~~and the Division~~ with his written objections thereto and his required amendments. Until the applicant shall amend his plan of operation to meet the ~~Director's~~ *Commissioner's* reasonable objections and file a satisfactory amended plan with the ~~Director~~ *Commissioner*, no permit shall be issued.

Upon receipt of the ~~Director's~~ approval and the required bond, the ~~Chief~~ *The Commissioner* shall *not* issue the permit unless if he finds that the applicant has had control or has had common control with a person, partnership, association, trust or corporation which has had a mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, ~~in which event no permit shall be issued~~. Except, however, if an operator who has heretofore forfeited a bond within thirty days of notice and demand by the ~~Director~~ *Commissioner* pays the cost of reclamation in excess of the amount of the forfeited bond, or if any bond is forfeited and the amount forfeited is equal to or less than the cost of reclamation, such operator shall then become eligible for another permit.

§ 45.1-185. Additional bond to be posted annually; release of previous bond; report of reclamation work.—Within ten days following the anniversary date of any permit, the operator shall post additional bond in the amount of fifty dollars per acre for each additional acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit for which no bond has been previously posted by him. Bond or other security previously posted shall be released for the areas disturbed in the last twelve months if reclamation work has been completed and the approval of the ~~Director~~ *Commissioner* obtained

in accordance with the following:

The operator shall file with the Department a written report on a form to be prescribed by the Department stating under oath that reclamation has been completed on certain lands and submit the following:

(a) Identification of the operation; (b) the county or city in which it is located and its location with reference to the nearest public highway; (c) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable it to be located and distinguished from other lands; (d) an accurate map or plan prepared by a licensed land surveyor or licensed engineer showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area and the methods of access to the area from the nearest public highway.

§ 45.1-186. Inspection and approval or disapproval of reclamation work; forfeiture of bond.—Upon receipt of the report called for in § 45.1-185, the ~~Director~~ *Commissioner* shall cause an inspection to be made of the land described in the report. If he shall approve the reclamation work completed by the operator, he shall notify the ~~Division~~ *operator* in writing and the ~~Chief~~ shall order the return of the bond or certified check to the operator.

If the ~~Director~~ *Commissioner* does not approve the reclamation work, he shall notify the operator immediately in writing and advise him of what additional steps he deems necessary to satisfactorily complete the reclamation. In such event, the operator shall have ninety days from the receipt of the ~~Director's~~ *Commissioner's* order to begin such additional reclamation and present satisfactory evidence to the ~~Director~~ *Commissioner* that such work is in progress. The bond or other security posted by the operator for such land shall not be refunded until he has obtained the ~~Director's~~ *Commissioner's* approval as aforesaid, and the ~~Director~~ has notified the ~~Division~~ in writing to this effect.

If the operator does not undertake to complete the reclamation in accordance with the notification of the ~~Director~~ *Commissioner* and submit evidence to the ~~Director~~ *Commissioner* that such work is in progress within ninety days of such order or within such additional period of time not to exceed six months which may be granted by the ~~Director~~ *Commissioner* for cause shown, the ~~Director~~ *Commissioner* shall request, and the ~~Chief~~ *Commissioner* shall order a forfeiture of the bond or other security posted by the operator at the rate of fifty dollars per acre or part thereof for each acre of land involved; or, upon the written request of the operator, the ~~Director~~ *Commissioner* shall survey the land involved and establish the cost of reclaiming such land. He shall immediately notify the operator by registered mail, who shall within thirty days of receipt of such notice deposit cash or a certified check with the ~~Director~~ *Commissioner* the sum set by the ~~Director~~ *Commissioner* for reclamation. Upon receipt of this sum, the ~~Director~~ *Commissioner* shall have the reclamation performed with the money so received and release the operator from further liability.

In the event the operator does not post the cost of reclaiming as set by the ~~Director~~ *Commissioner* or does not request him to set such amount the ~~Chief~~ *Commissioner* shall certify the fact to the Attorney General who shall proceed to collect the amount thereof, which, when collected, shall be deposited in the State treasury in a special fund to be used by the ~~Director~~ *Commissioner* in performing reclamation under the provisions of this chapter. Furthermore, following the order of forfeiture the ~~Director~~ *Commissioner* shall perform such reclamation operations as he deems necessary with the resources and facilities of his Department or as provided by § 45.1-192 hereof, the cost thereof to be paid from the proceeds of the special fund above created.

§ 45.1-187. Additional bond to cover amended estimate of land to

be disturbed.—If, during any operation, it is found that the operator's estimate of the amount of disturbed land for which bond or other security has been posted for reclamation is less than the actual area disturbed, the ~~Chief~~ *Commissioner* shall order the operator to file additional bond or security sufficient to cover an amended estimate of land to be dis-

§ 45.1-188. Interference with reclamation unlawful; operations on land.—It shall be unlawful for any owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligations to the State for the reclamation of lands disturbed by him. If the owner or owners of surface rights or the owner or owners of mineral rights desire to conduct other mining operations on lands disturbed by the operator furnishing bond hereunder, such owner or other person shall be in all respects subject to the provisions of this chapter and the ~~Chief~~ *Commissioner* shall then release an equivalent amount of bonds of the operator originally furnishing bond on the disturbed area.

§ 45.1-191. Penalty for violation of chapter, etc.—Any violation of any provision of this chapter or of any order of the ~~Director~~ *Commissioner* or ~~Chief~~ shall be a misdemeanor punishable by a maximum fine of one thousand dollars or a maximum of one year in jail, or both.

§ 45.1-192. Assistance of federal, State and local agencies.—In approving plans of operation and in issuing rules and regulations for reclamation, the ~~Director~~ *Commissioner* may avail himself and his Department of the advice, assistance and facilities of local soil and water conservation district supervisors or any other federal, State or local agency.

§ 45.1-193. Injunctive relief.—In addition to other legal processes, the ~~Chief or the Division or the Director~~ *Commissioner* or the Department may seek injunctive relief to enforce any rule, regulation, order or requirement issued.

§ 45.1-196. Any person aggrieved by any *order, rule or regulation of the Department or Board, subject to the requirements of §§ 10-17.58 through 10-17.64 regarding Board review, opinion issued by the Board* shall have the right of appeal to the circuit court of the county in which the land or a major portion thereof which is involved in the opinion appealed from is located. Such appeal shall be filed within thirty days after the opinion is rendered. The filing of an appeal hereunder shall not automatically stay the effect of the opinion appealed from, but, if on application to the court, undue hardship is shown to result, the court in its discretion may suspend the execution thereof and fix the terms.

§ 45.1-197. Local standards and regulations; waiver of application of chapter.—Counties, cities and towns may establish standards and adopt regulations dealing with the same subject; provided, however, such standards and regulations shall not be below those adopted by the ~~Chief and Director~~ *Commissioner*.

This chapter shall not be construed to repeal any local ordinance or regulation or charter provision now in effect in any county, city or town where the provisions are not less than the standards adopted by the ~~Chief and Director~~ *Commissioner*. The ~~Chief~~ *Commissioner* may waive the application of this chapter if, in his opinion, a county, city or town in which surface mining operations are being conducted has enacted zoning ordinances dealing with the subject matter, prescribing standards and regulations not below those set forth in this chapter. If the ~~Chief~~ *Commissioner* waives the provisions hereof, the operator shall comply strictly with all the provisions of the ordinances of such counties, cities and towns in which his operations are located.

The ~~Chief~~ *Commissioner* may also waive the application of this chap-

ter as to any mining or borrow pit operation which is conducted solely and exclusively for a State agency, provided regulations satisfactory to the ~~Chief Board~~ have been promulgated and are incorporated in any contract for such removal.

§ 45.1-197.1. *Nothing in this chapter shall be construed to encroach upon the powers and duties of the Chief of the Division of Mines and Quarries relating to the health and safety of the workers in underground and surface mining operations. In safety and health, all workers are to be governed solely by Title 45.1, Chapters 1 through 14 (§§ 45.1-1 to 45.1-161) and such rules and regulations adopted by the Chief Mine Inspector as he may deem appropriate.*

§ 45.1-198. Legislative findings; declaration of policy.—(a) The General Assembly finds that, although the surface mining of coal within the Commonwealth provides a significant, present source of energy and employment, uncontrolled coal surface mining and unreclaimed land can adversely affect the environment through the erosion of the land and the increased likelihood of floods and landslides through the destruction of vegetative cover, the removal of overburden, the alteration of normal drainage patterns, the increased siltation and sedimentation of streams as well as other forms of pollution, the temporary and in some circumstances permanent destruction of scenic beauty and wildlife habitats.

(b) The General Assembly further finds that the proper control of surface mining of coal so as to minimize or prevent adverse disruptions and the injurious effects thereof requires thorough planning in selection of appropriate coal surface mining sites, methods of coal surface mining and the nature and extent of reclamation, consideration of the impact of coal surface mining upon the ecology and land use of surrounding areas as well as upon the disturbed land of the coal surface mining site; and the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of coal surface mining.

(c) The General Assembly declares that it is in the public interest and shall be the policy of this chapter to require and encourage the proper control of surface mining of coal so as to minimize or prevent adverse disruptions and injurious effects thereof upon the people and resources of the Commonwealth through good industry and sound conservation practices, and to require and encourage through operations and reclamation planning, consideration of surrounding ecology and land use, and incorporation of control techniques and reclamation actions in coal surface mining operations insofar as practicable to assure such proper control of coal surface mining. To these ends, the ~~Director~~ *Commissioner* of Conservation, and ~~Economic Development and Natural Resources~~ is mandated to enforce this chapter and the ~~Natural Resources Board of Conservation and Economic Development~~ is mandated to adopt whatever regulations are found necessary to accomplish the policy of this chapter.

(d) The General Assembly by this chapter intends to exercise the police power of this Commonwealth in a coordinated Statewide program to control present and future problems associated with the surface mining of coal resources and the reclamation of disturbed lands to the end that coal surface mining activities shall be regulated in a manner that will effectuate the purpose of this chapter.

(e) Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the rights of any person to any dispute involving property rights, or the right of any person to damage or other relief on account of injury to persons or property due to coal mining activities regulated by this chapter and to maintain any action or other appropriate procedure therefor; nor to affect the powers of the Commonwealth to initiate, prose-

cute and maintain actions to abate public nuisances.

§ 45.1-199. Definitions.—The following words and phrases when used in this chapter shall have the meaning respectively ascribed to them in this section except where the context clearly requires a different meaning; the *Natural Resources Board of Conservation and Economic Development* shall have the power to adopt by regulation such other definitions as may be deemed necessary to carry out the intent of this chapter:

(a) “*Coal surface mine*” or “*coal surface mining*”—The breaking or disturbing of the surface soil or rock in order to facilitate or accommodate the extraction or removal of coal by strip, auger, or other mining methods; any activity constituting all or part of a process for the extraction or removal of coal so as to make it suitable for private, commercial construction or industrial use.

(b) “*Disturbed land*”—The areas from which overburden has been removed in coal surface mining operations, the areas covered by spoil, or any other areas, including access roads, used in such surface mining operation which have been disturbed and may cause injurious effects thereby.

(c) “*Overburden*”—All of the earth and other material which lie above or around a natural deposit of coal.

(d) “*Spoil*”—Any overburden or other material removed from its natural state in the process of coal surface mining.

(e) “*Reclamation*”—The restoration or conversion of disturbed land to a stable condition which minimizes or prevents adverse disruption and the injurious effects thereof and presents a reasonable opportunity for further productive use.

(f) “*Director*” “*Commissioner*”—The ~~Director~~ *Commissioner* of the Department of Conservation, and ~~Economic Development and Natural Resources~~ or his authorized agents.

(g) “*Division*”—The Division of Mined Land Reclamation.

(h) “*Person*”—Any individual, firm, corporation or corporation officer, joint venture, partnership, association, trust, or any other group or combination acting as a unit, or any other legal entity.

(i) “*Operator*”—Any person engaging in the surface mining of coal whether or not such coal is sold within or without the State.

(j) “*Board*”—Shall mean the ~~Board of Conservation and Economic Development~~ *Natural Resources Board*.

§ 45.1-200. Authority of Board and Commissioner; enforcement of chapter by injunction; construction of chapter.—(a) The authority to promulgate rules and regulations to effectuate the provisions and the policy of this chapter is hereby vested in the Board of *Natural Resources Conservation and Economic Development* and specifically includes the authority to regulate prospecting activities in general.

(b) The authority to administer and enforce the provisions of this chapter is hereby vested in the ~~Director~~ *Commissioner* of the Department of Conservation, and ~~Economic Development and Natural Resources~~. In administering and enforcing the provisions of this chapter, the ~~Director~~ *Commissioner* shall exercise the following powers in addition to any other powers conferred upon him by law:

(1) To supervise the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;

(2) To issue orders to enforce the provisions of this chapter, all rules and regulations promulgated thereunder, and the terms and conditions of any permit;

(3) To make investigations and inspections to insure compliance with any provision of this chapter or any rules, regulations, or orders promulgated thereunder;

(4) To encourage and conduct investigations, research, experiments

and demonstrations, and to collect and disseminate information relating to coal surface mining and reclamation of lands and waters affected by coal surface mining;

(5) To receive any federal funds, State funds or any other funds and to enter into any contracts, for which funds are available, to carry out the purposes of this chapter.

(c) In addition to any administrative remedy granted herein, the ~~Director~~ *Commissioner* may petition any court of competent jurisdiction for an injunction against any violation of the provisions of this chapter, and the rules, regulations and orders promulgated thereunder or to compel the performance of acts required thereby without regard to any adequate remedy which may exist at law, said injunction to be issued without bond; however, with regard to the suspension of mining operations, § 45.1-210 shall control.

(d) Nothing in this chapter shall be construed to encroach on the powers and duties of the Chief of the Division of Mines and Quarries relating to the health and safety of the workers in underground and surface mining operations. In safety and health, all surface workers are to be governed solely by Title 45.1, Chapters 1 through 14 (§§ 45.1-1 to 45.1-161) and such rules and regulations adopted by the Chief Mine Inspector as he may deem appropriate.

§ 45.1-201. Prospecting permit.—(a) It shall be unlawful for any person to use excavating equipment in an area for which no valid coal surface mine permit is in effect for the purpose of removing overburden to determine the location, or quantity or quality of a coal deposit, or to determine the feasibility of removing coal by surface mining methods without having first obtained from the Department of ~~Conservation and Economic Development~~ a permit therefor as provided in this section; provided, however, that no such permit shall be issued for more than ten acres. Application for a prospecting permit shall be made in writing on forms prescribed by the ~~Director~~ *Commissioner* and shall be signed and verified by the applicant. The application shall be accompanied by: (1) a fee of six dollars per acre based on the acreage estimated to be disturbed during prospecting as shown by a plat supplied by the applicant, provided this amount shall be credited towards the land disturbance fee required under subsection (f) of § 45.1-202 if such fee is paid for disturbance of land for which a prospecting fee was paid; (2) a United States geological survey topographic map showing by proper markings the crop line and the name, where known, of the seam or seams to be prospected; (3) a reclamation plan meeting the requirements of § 45.1-204 for the area proposed to be disturbed by prospecting; and (4) a bond meeting the requirements of § 45.1-206 in the amount of three hundred dollars per acre or fraction thereof for the total estimated disturbed acreage. The bond shall be payable to the State of Virginia and conditioned upon the applicant faithfully performing all the requirements of the reclamation plan. The bond shall be released by the ~~Director~~ *Commissioner* in accordance with the provisions of § 45.1-206 (b). Any excavation carried out under a prospecting permit and not incorporated into the complete reclamation plan as provided in paragraph (b) of this section shall be reclaimed as set forth in the rules and regulations.

(b) In the event the holder of a prospecting permit desires to surface mine the area covered by the prospecting permit, the ~~Director~~ *Commissioner* may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into a complete reclamation plan submitted with application for a coal surface mining permit within a period of three months following completion of each separate excavation under the prospecting permit.

§ 45.1-202. Surface mining permit.—(a) It shall be unlawful for any person to engage in surface mining of coal in this State without having first obtained a permit to engage in such operation. Such permits shall be valid for one year, shall not be transferable, and shall cover such areas as contained in the application for a permit and shall be renewed annually on the anniversary date of issuance.

(b) Application for a surface mining permit shall be made to the ~~Division~~ *Commissioner* on a form furnished by the ~~Director~~ *Commissioner* and shall be signed and sworn to by the person, or his legal representative intending to engage in surface mining of coal.

(c) The application shall contain such information as is required by regulation, including, but not limited to, a description of the land to be disturbed and the coal to be extracted, the surrounding land use that may be affected; identification of the person intending to engage in surface mining of coal, the owners of the land to be disturbed and the owners of the coal and mineral rights; the source of the applicant's legal right to enter and conduct operations on the land to be covered by the permit. Appended to the application shall be such maps and drainage plans as may be required by the ~~Director~~ *Commissioner*.

(d) The application for a permit shall include a statement of any mining permits issued by the State and held, at the time of or prior to application, by the applicant or by any individual, corporation, partnership, association or any other legal entity of which or with which the applicant has or has had control or common control. If the ~~Director~~ *Commissioner* finds that such permits have been revoked or bond or security thereunder forfeited, no permit shall be issued.

(e) The application for a permit shall be accompanied by a fee of six dollars per acre of the area of land to be affected by the total operation for which plans have been submitted.

(f) A renewal fee of two dollars per acre shall be payable each year on the anniversary date of the permit for the amount of the undisturbed land remaining on the original permit.

§ 45.1-203. Operations plan to accompany application for permit for registration.—(a) The application for a permit for registration shall be accompanied by an operations plan in such form and with such accompanying material as the ~~Director~~ *Commissioner* shall require, describing: (1) the proposed method of operation, including the manner, time, and distance for back filling and grading work where appropriate, and stating the nature and extent of anticipated adverse disruptions and injurious effects, reasonably foreseeable, as a result of the proposed coal surface mining operation, upon the land proposed to be disturbed and upon surrounding land use, both during the coal surface mining operations and after the conclusion of such operations, and (2) proposed control techniques to minimize or prevent such disruptions or effects.

(b) There shall be a drainage plan appended to the operations plan, which shall provide for the proposed scheme of drainage control in accordance with the regulations of the Board.

(c) In order to meet the purposes of this chapter, spoils shall be retained on the bench to the extent feasible in accordance with an approved operation plan and retained spoils are to be subsequently used for back filling to further reduce the ultimate highwall to the maximum extent practicable.

(d) The operations and drainage plans shall be an integral part of the terms and conditions of issuance of the coal surface mining permit. The provisions of these plans shall be carried out simultaneously with mining operations insofar as practicable. The plans may be amended to meet the exigencies of any unanticipated circumstance or event.

§ 45.1-204. Reclamation plan to accompany application for permit for registration.—The application for a permit for registration shall be accompanied by a plan for reclamation of all disturbed land estimated to result from the coal surface mining for which the permit is sought. The plan shall be in such form and with such accompanying material as the ~~Director~~ Commissioner shall require and shall state: (1) the planned land use to which the disturbed land is to be returned through reclamation; and (2) proposed actions to assure suitable reclamation of the disturbed land for the planned use to be carried out by the applicant as an integral part of the proposed coal surface mining operation and to be conducted simultaneously insofar as possible.

Notwithstanding the provisions of subsection (c) of § 45.1-203 it shall be the policy of the ~~Director~~ Commissioner to encourage adoption of more productive land use, such as pasture, agricultural use, recreational areas, sanitary landfills, industrial and building sites.

The reclamation plan shall meet the requirements of this chapter and rules and regulations adopted pursuant thereto and shall be a part of the terms and conditions of the coal surface mining permit. The plan may be amended if required to meet the exigencies of any unanticipated circumstance or event.

§ 45.1-205. Review and approval or disapproval of application.—(a) The ~~Director~~ Commissioner shall review the application along with all accompanying material, shall consider all other relevant factors relating to the issuance of the permit and recommend whether or not the permit should be issued. The ~~Director~~ Commissioner shall approve the application only after he is satisfied that all the requirements of this chapter and rules and regulations adopted pursuant thereto are fully observed and that there is probable cause to believe that the operations and reclamation plans will be carried out consistent with the purposes of this chapter, but in no event shall the ~~Director~~ Commissioner fail to approve or disapprove the application within thirty days following the receipt thereof.

(b) In reviewing operations and reclamation plans, the ~~Director~~ Commissioner shall have such advice and assistance of the local soil and water conservation districts, consulting agencies, and any agencies of the State charged with environmental responsibilities as he may request.

(c) The ~~Director~~ Commissioner shall cause such inspections to be made of the land proposed to be coal surface mined and disturbed as he deems necessary to assure adequate review of the application, and refusal by the applicant or his representative to allow such inspection of the proposed coal surface mining site shall be grounds for refusal to approve the application.

(d) If in reviewing such plans, the ~~Director~~ Commissioner finds that the operation will constitute a hazard to public safety; or that reclamation or proper drainage control is not feasible; or that any spoil would adversely affect an established water course; or that the operation would adversely affect a public park, certified historic landmark or recreational area, then he shall disapprove the application or, if feasible, approve the application after deleting such areas from the permit application as will remove the grounds of refusal hereinabove stated.

§ 45.1-206. Bond of applicant; final report of operator; inspection and approval or disapproval of reclamation work.—(a) After approval of the application, and as a condition of issuance of the registration permit, the applicant shall be required to furnish bond, on a form prescribed by the ~~Director~~ Commissioner, in the amount of no less than two hundred dollars or more than one thousand dollars per acre to be disturbed within the next ensuing year, and for which the operator has paid the permit fee, based on the estimated cost of reclaiming the land to be disturbed and the

quality and quantity of coal estimated to be produced from the operation, conditioned upon the applicant's faithfully and satisfactorily complying with the approved operations and drainage plans and reclamation plan. In no event shall any bond be less than twenty-five hundred dollars; however, in the event the total amount of acreage to be disturbed is less than five acres, the bond shall be not less than one thousand dollars. Such bond shall be with corporate surety licensed to do business in this State; provided, however, that in lieu of such surety the operator may deposit with the ~~Director~~ *Commissioner* cash or certified check. Upon satisfactory execution of bond, the ~~Director~~ *Commissioner* shall issue a permit.

(b) Upon completion of the coal surface mining and reclamation for which the permit was issued, the operator shall submit a final report, on a form to be prescribed by the ~~Director~~ *Commissioner*, stating that he has completed coal surface mining and reclamation in compliance with the approved operations, drainage, and reclamation plans and requesting release of bond. Upon receipt of such report, the ~~Director~~ *Commissioner* shall cause an inspection to be made of the permit site. If the ~~Director~~ *Commissioner* is satisfied that the requirements of the operations, drainage and reclamation plans have been fully complied with, and all fees have been paid, he shall approve the final operation, drainage and reclamation plans report and shall order the return of the bond; provided, however, that the ~~Director~~ *Commissioner* shall approve or disapprove the final report within a period not to exceed one year from the date upon which he receives the final report from the operator. If the ~~Director~~ *Commissioner* disapproves the final report, he shall notify the operator immediately in writing and advise him of what additional steps are deemed necessary to comply with the operations and reclamation plans.

§ 45.1-207. Disposition of fees.—All fees collected under the provisions of this chapter shall be paid into a special fund of the Department of Conservation and Economic Development under this chapter, to be used for the reclamation of orphaned lands pursuant to Article 3 hereof (§ 45.1-216 et seq.) and are hereby appropriated for such purposes.

§ 45.1-208. Unlawful for owner to interfere with reclamation work; other mining operations on disturbed land.—It shall be unlawful for any owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator so as to hinder, delay, or prevent the discharge of his obligations to the State for the reclamation of lands disturbed by him. Provided, however, that if the owner or owners of surface rights or the owner or owners of mineral rights decide to conduct activities on the land disturbed by coal surface mining operations and such activities will delay, hinder or prevent the adequate reclamation of the disturbed land as set forth in the reclamation plan, the subject owner or owners shall be in all respects subject to the provisions of this chapter regardless of the activities contemplated, and specifically shall be responsible for reclamation of that portion of the disturbed area on which their activity occurs and shall give adequate bond pursuant to § 45.1-206. If these provisions have been complied with by the aforementioned owner or owners, the ~~Director~~ *Commissioner* shall then release an equivalent amount of bond of the operator originally furnishing bond on the disturbed area.

§ 45.1-209. Notice of noncompliance; revocation of permit and forfeiture of bond.—The ~~Director~~ *Commissioner* may cause a notice of noncompliance to be served on the operator whenever the operator fails to obey any order by the ~~Director~~ *Commissioner* to:

- (1) Apply the control techniques in his operations and drainage plans;
- (2) Institute the actions approved in his reclamation plan;

(3) Follow any required amendments to the operations or reclamation plans; or

(4) Comply with any other requirement of this chapter or any rules or regulations promulgated pursuant thereto.

A copy of the notice shall be delivered to the operator or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to obey the order of the ~~Director~~ *Commissioner* and shall require the operator to comply with the order within a reasonable period of time as fixed by the ~~Director~~ *Commissioner*, following service of the notice. If the operator has not complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the ~~Director~~ *Commissioner* shall revoke the permit and declare the forfeiture of the entire bond, which when collected shall be deposited in the State treasury in a special reclamation fund to be used by the ~~Director~~ *Commissioner* in performing reclamation under the provisions of this chapter. After completion of the reclamation and payment of all fees required by this chapter, any additional funds from the forfeiture of the bond shall be returned to the corporate surety. If a certified check or cash has been deposited in lieu of bond, any residue shall be returned to the person who provided same originally or the operator.

§ 45.1-210. Injunction prohibiting mining operations.—Whenever adverse ecological disruptions or other injurious effects of mining operations seriously threaten or endanger health, safety and property rights of any individual, and abatement is not feasible by the application of control techniques, the ~~Director~~ *Commissioner* shall petition the court of record having general equity jurisdiction wherein such mining operations are located, for an injunction to prohibit further operations. Upon granting such injunction, the court may require the ~~Director~~ *Commissioner* to post a bond in the amount such court deems advisable. Such injunction shall not relieve the operator from his duty to reclaim lands theretofore disturbed according to the terms and conditions of his permit.

§ 45.1-211. Performance of reclamation operations by Commissioner.—In the event of forfeiture of bond, the ~~Director~~ *Commissioner* shall perform such reclamation operations as he deems necessary to return disturbed land to the minimum planned land use, pursuant to the relevant operation, drainage and reclamation plans, the cost of such reclamation to be paid from the proceeds of the special reclamation fund created for that purpose. He may use the resources and facilities of the ~~Division~~ *Department* or he may enter into contracts for performance of such reclamation with any individual, corporation, partnership, association or any other legal entity, any soil conservation district, or any agency of the State or federal government. After a contract is entered into by the ~~Director~~ *Commissioner* with anyone other than the operator, the operator shall be relieved from all further responsibility in reference to reclamation of the disturbed land.

§ 45.1-213. Appeal from decision of Board or Commissioner.—Any operator who is aggrieved by ~~an opinion issued by any final action of the Board of Conservation and Economic Development or hearings officer~~ *the Commissioner, subject to the requirements of §§ 10-17.58 through 10-17.64 regarding Board review*, shall have the right of appeal to the circuit court of the county or corporation court of the city in which the land or a major portion thereof which is involved in the opinion appealed from is located. Such appeal shall be filed within twenty-one days after the opinion of the Board ~~or hearings officer~~ is rendered. The filing of an appeal hereunder shall not automatically stay the effect of the opinion appealed from, but, if on application to the court, undue hardship

is shown to result, the court in its discretion may suspend the execution thereof and fix the terms.

§ 45.1-214. Misdemeanors.—(a) It shall be a misdemeanor, punishable by a fine of not more than one thousand dollars or confinement in jail for a period not exceeding one year or both, for any person: (1) to surface mine for coal without first obtaining a permit or after a permit has lapsed, or after suspension or revocation of a permit; (2) to obtain a permit through the deliberate submission of false or misleading information; (3) to fail willfully to follow the approved control techniques or actions set forth in his operation, drainage, or reclamation plans in any significant particular; or (4) to disregard willfully or disobey the regulations or orders promulgated pursuant to the provisions of this chapter.

(b) Continuation of the offenses specified in subsections (3) and (4) of paragraph (a) of this section shall be deemed willful after delivery of written notice of the terms of the violation by the ~~Director~~ *Commissioner* to the permit holder pursuant to § 45.1-209 or the evasion of, or the refusal to accept, delivery of such notice.

(c) Each day that the offenses specified as subsections (1), (3), and (4) of paragraph (a) of this section continue shall constitute a separate violation.

§ 45.1-215. Operators holding permits issued under former Chapter 15; Chapter 15 continued in effect for certain purposes.—Any operator holding a valid permit issued pursuant to the provisions of Chapter 15 of Title 45.1 shall comply with all of the provisions of this chapter on July one, nineteen hundred seventy-two, or be considered to be in violation of subsection (a)(1) of § 45.1-214 as to mining operations conducted after July one, nineteen hundred seventy-two. Any permits issued under § 45.1-163 shall be renewable and subject to such renewal fee contained in § 45.1-202 (f). If, however, in the opinion of the ~~Director~~ *Commissioner* such operator cannot comply with the provisions of this chapter on its effective date, the ~~Director~~ *Commissioner* may, upon payment of the fees herein prescribed pursuant to subsection (f) of § 45.1-202 issue a permit conditioned upon the future compliance with all of the provisions of this chapter.

The provisions of Chapter 15 are continued in effect as to reclamation of land on which mining operations were completed prior to July one, nineteen hundred seventy-two.

§ 45.1-217. Survey; priorities for reclamation.—The ~~Director~~ *Commissioner* shall cause a survey to be conducted to determine the extent of the orphaned lands in this State and shall establish priorities for the reclamation thereof.

§ 45.1-218. Agreements with owners or lessees; reclamation by Commissioner.—The ~~Director~~ *Commissioner* is authorized to enter into agreements with owners or lessees of orphaned lands whereby the owners shall agree to the reclamation of such lands by the Division to the extent and in the manner deemed appropriate or feasible by the ~~Director~~ *Commissioner*. In no event shall the ~~Director~~ *Commissioner* return orphaned land to other than the minimum potential use thereof which obtained prior to the limitation of mining operations unless the landowner or owners, lessee or lessees, agree to bind himself or themselves to the payment of the additional cost upon such terms as the ~~Director~~ *Commissioner* deems reasonable. In entering into such agreements, the ~~Director~~ *Commissioner* shall be guided by the priorities for reclamation established by him, but in no event shall the ~~Director~~ *Commissioner* enter into such agreement unless funds are immediately available for the performance of the agreement by the ~~Director~~ *Commissioner* as hereinafter provided.

§ 45.1-219. Contracts for reclamation.—The ~~Director~~ *Commissioner*

is authorized to contract with any State agency, federal agency, or private contractor through the ~~Division~~ *Department* for the purpose of reclaiming orphaned lands pursuant to the agreements herein specified.

§ 45.1-220. Acceptance of federal funds, gifts, etc.—The ~~Director~~ *Commissioner* is authorized to accept federal funds or gifts or grants from any source for the purposes of this article and is further authorized to acquire by gift or purchase (but not by the exercise of the power of eminent domain) such orphaned lands as in his judgment is in the public interest and to utilize any such funds, gifts or grants, as well as any fees collected under the provisions of this chapter, for the reclamation of such orphaned lands.

§ 58-730.3. Refund of tax on fuel used in boats, etc.; use of remainder of such tax.—Notwithstanding the provisions of §§ 58-715, 58-730, 58-730.1, or any other provision of law, if the applicant for refund of motor fuel tax collected pursuant to this chapter includes with such application a statement that the fuel was used for propelling a boat or boats, or a ship or ships, the Commissioner shall refund to such applicant seven and one-half cents per gallon on all such motor fuel, and the Commissioner shall pay into the State treasury to the credit of the game protection fund one and one-half cents per gallon on such fuel so used, and all money so credited to that fund shall be available to the ~~Commission~~ *Division* of Game and Inland Fisheries until expended for the purposes provided for generally in § 62.1-168(c) including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this State and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose.

§ 62.1-3. Authority required for use of subaqueous beds.—(a) It shall be unlawful and constitute a misdemeanor for anyone to build, dump, or otherwise trespass upon or over or encroach upon or take or use any materials from the beds of the bays and ocean, rivers, streams, creeks, which are the property of the Commonwealth, unless such act is pursuant to statutory authority or a permit by the ~~Marine Resources Commission~~ *Commissioner of the Department of Conservation, Development and Natural Resources*. Statutory authority is hereby conferred for the doing of such acts as are necessary 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, (6) fills by riparian owners opposite their property to any lawfully established bulkhead line, provided that such owners have been granted, prior to July one, nineteen hundred seventy-two, a certificate of assurance from the ~~State Water Control Board~~ *Department* pursuant to § 21 (b) 401 of the ~~Federal Water Quality Improvement Act of 1970~~ *Pollution Control Act Amendments of 1972*, (9) piers, docks, marine terminals and port facilities owned or leased by or to the Commonwealth or a political subdivision thereof, (10) the placement of private piers for noncommercial purposes by owners of riparian lands in the waters opposite such riparian lands; provided, however, such private piers shall not extend beyond the navigation line or lawful private pier lines established by proper authority, and (11) causing the removal of silt and other waste material inside any lawfully established bulkhead line by riparian owners opposite their property incident to the construction and use of any graving dock, drydock or other shipbuilding facilities, where such owners have obtained prior to July one, nineteen hundred seventy-two, a certificate of assurance from the ~~State Water Control Board~~ *Department* pursuant to § 21 (b) 401 of the ~~Federal Water Pollution Control Act Improvement Act of 1970~~ *Amendments of 1972*.

(b) *It shall be the duty of the Board of Marine Resources and it shall have the authority:*

(1)(a) *To establish such standards and policies for the State or any area of the State consistent with the general policies set forth in this chapter and to modify, amend or cancel any such standards or policies established.*

(b) *Such standards and policies are to be adopted or modified, amended or canceled only after a hearing held after publication of a notice of the time, place and purpose thereof at least once in at least one newspaper of general circulation and the locality to which such standards and policies apply not less than thirty nor more than sixty days prior to the day on which the public hearing on the adoption, modification, amendment or cancellation of such standards and policies will be held. Such standards and policies, or the modification, amendment or cancellation of such standards and policies will become effective thirty days after they are filed with the Secretary of the Commonwealth.*

(2) *To adopt such rules and regulations as it deems necessary to enforce the general standards and policies of the State, such regulations to be effective thirty days after they are filed in the office of the Secretary of the Commonwealth. Such rules and regulations are to be adopted or modified or amended or canceled only after notice and hearing as provided with respect to promulgation of standards and policies.*

(c) ~~The Marine Resources Commission~~ *Commissioner shall have the authority to issue permits for all other reasonable uses of State-owned bottom lands, including but not limited to, the taking and use of material, the placement of wharves, bulkheads, dredging and fill, by owners of riparian lands, in the waters opposite such riparian lands; provided, however, that such wharves, bulkheads and fill shall not extend beyond any lawfully established bulkhead line.*

~~The Marine Resources Commission Board~~ *is hereby authorized and empowered, but not in conflict with the United States Corps of Army Engineers, to establish bulkhead lines and lawful private pier lines on or over bays, rivers, creeks, streams and the shores of the ocean, to the extent owned by or subject to the jurisdiction of the Commonwealth for that purpose, and to issue and publish maps and plats showing such lines.*

~~The permits issued by the Marine Resources Commission~~ *Commissioner shall be in writing and shall specify such conditions, terms and royalties as the ~~Marine Resources Commission~~ Commissioner deems appropriate.*

~~In granting or denying any permit for the use of State-owned bottom lands, the Commission~~ *Commissioner shall be guided in its his deliberations by the provisions of Section 1 of Article XI of the Constitution of Virginia, any standards, policies and regulations adopted by the Board, and shall consider, among other things, the effect of the proposed project upon other reasonable and permissible uses of State waters and State-owned bottom lands, its effect upon the marine and fisheries resources of the Commonwealth, its effect upon the wetlands of the Commonwealth, and its effect upon adjacent or nearby properties, its anticipated public and private benefits, and, in addition thereto, the ~~Commission~~ Commissioner shall give due consideration to standards of water quality as established by the ~~State Water Control Board~~ Water Resources Board.*

No applications for a permit for a marina or boatyard for commercial use shall be granted unless the owner or other applicant prior to issue presents a plan for sewage treatment or disposal facilities which is approved by the State Department of Health. The Commissioner of Conservation, Development and Natural Resources shall ensure that within the Department of Conservation, Development and Natural Resources there

shall be consultations among and between each affected Division of that Department, and any other Marine Resources Commission shall consult with any State agency, including the Virginia Institute of Marine Science, the Water Control Board, the State Highway Department and the State Corporation Commission, whenever the decision of the Marine Resources Commission Department on an application for a permit relates to or affects the particular concerns or activities of those Divisions or of other State agencies.

(e) A fee of twenty-five dollars shall be paid for issuing each such permit as a charge for such permit, but if the cost for the project or facility is to be more than ten thousand dollars, the fee paid shall be one hundred dollars; provided, that nothing herein shall be construed to preclude such other lawful charges as may be made, including the imposition of additional assessments not to exceed an amount treble the normal permit fees, plus any royalties involved where it appears that the project or facility for which an application for permit is made has been completed or work thereon already commenced at the time such application is made. When the activity or project for which a permit is requested involves the removal of bottom material, the application shall so state and the Marine Resources Commission Department shall specify in each such permit issued a royalty of not less than ten 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 agreement or contract made by the Marine Resources Commission Department respecting the amount, terms and conditions on which such royalties are paid or payable 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 Marine Resources Commission Commissioner.

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

Any person aggrieved by a decision of the Marine Resources Commission Commissioner or the Marine Resources Board, subject to the requirements of §§ 10-17.58 through 10-17.64, pursuant to this section shall have the right to judicial review of appeal of said decision as provided in § 28.1-33 § 28.1-63. and of the Code of Virginia.

The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision of the Environmental Coordination Act of 1973 shall control.

§ 62.1-3.01. When Commissioner may approve permit for encroachment on subaqueous beds.—Any application for a permit to trespass upon or over or encroach upon the subaqueous beds which are the property of the Commonwealth, which meets all the requirements of § 62.1-3 and meets the following criteria, may be approved by the Commissioner:

(a) The total value of the project does not exceed ten thousand dollars;

(b) Is not protested by any citizen nor objected to by any State

agency; and

(c) Is not a part of any project that will involve another Marine Resources Commission permit *under this chapter*.

§ 62.1-3.1. Injunction against violation of § 62.1-3.—Upon application of the ~~Marine Resources Commission~~ *Department of Conservation, Development and Natural Resources* to a court of record of the city or county wherein any act is done or facility or project is found, which is unlawful under the provision of § 62.1-3 of the Code and upon reasonable notice and after hearing, the court shall have the authority to enjoin any further unlawful act and to direct the person guilty thereof or the ~~Marine Resources Commission~~ *Department*, at the costs of the person found to have acted unlawfully, to remove, tear down or otherwise take such steps as are necessary to protect and preserve the subject property of the Commonwealth.

§ 62.1-4. Granting easements in, and leasing of, the beds of certain waters.—The ~~Marine Resources Commission~~ *Department of Conservation, Development and Natural Resources*, with the approval of the Attorney General and the Governor, may grant easements in, and may lease, the beds of the waters 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 § 62.1-2. The Commissioner of ~~Marine Resources~~ 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.

§ 62.1-5. The ~~Commission of Game and Inland Fisheries~~ *Department of Conservation, Development and Natural Resources* is hereby empowered to ~~control restrict the use of~~ 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 conformance with any such regulation of the Game and Inland Fisheries Board and the Marine Resources Board as shall 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 and wetlands.

§ 62.1-13.2. Definitions.—For the purpose of this chapter, the following words shall have the meanings respectively ascribed to them:

(a) "~~Commission~~ Department" means the Virginia Marine Resources Commission ~~Department of Conservation, Development and Na-~~

(b) "Commissioner" means the Commissioner of Marine Resources the Department.

(b1) "Board" means the Marine Resources Board.

(c) "Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

(d) "Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, Nansemond, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Southampton, Stafford, Surry, Sussex, Westmoreland, and York; and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

(e) "Governmental services" means any or all of the services provided by a county, city or town to its citizens for the purpose of maintaining such county, city or town and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights, and construction of public buildings.

(f) "Wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in the county, city or town in question; and upon which is growing on July one, nineteen hundred seventy-two, or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoices*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spike-rush (*Eleocharis* sp.), sea rocket (*Cakile ecentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), threesquares (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* spp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's ticks (*Bidens* sp.), smartweeds (*Polygonum* sp.), arrow-head (*Sagittaria* spp.), sweet flag (*Acorus calamus*), and switch grass (*Panicum virgatum*).

(g) "Wetlands board" ~~or "board"~~ means a board created as provided in § 62.1-13.6.

(h) "Wetlands zoning ordinance" means that ordinance set forth in § 62.1-13.5.

(i) "County, city or town" shall mean the governing body of such county, city or town.

§ 62.1-13.2:1. *The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision of the Environmental Coordination Act of 1973 shall control.*

§ 62.1-13.4. In order to implement the policy set forth in § 62.1-13.1 and to assist counties, cities or towns in regulation of wetlands, the ~~Commission~~ Board shall, with the advice and assistance of the Virginia Institute of Marine Science, which will evaluate wetlands by type and maintain a continuing inventory of those wetlands, from time to time promulgate guidelines which scientifically evaluate wetlands by type and which set forth the consequences of use of these wetlands types. In developing guidelines, the ~~Commission~~ Board is empowered to consult with any governmental agency.

§ 62.1-13.4:1. *It shall be the duty of the Board and it shall have the authority:*

(1)(a) *To establish such wetlands standards and policies for the State or any area of the State consistent with the general policies set forth in this Chapter and to modify, amend or cancel any such standards or policies established.*

(b) *Such standards and policies are to be adopted or modified, amended or canceled only after a hearing held after publication of a notice of the time, place and purpose thereof at least once in at least one newspaper of general circulation in the locality to which such standards and policies apply not less than thirty nor more than sixty days prior to the day on which the public hearing on the adoption, modification, amendment or cancellation of such standards and policies will be held. Such standards and policies, or the modification, amendment or cancellation of such standards and policies will become effective thirty days after they are filed with the Secretary of the Commonwealth.*

(2) *To adopt such rules and regulations as it deems necessary to enforce the general wetlands standards and policies of the State, such regulations to be effective thirty days after they are filed in the office of the Secretary of the Commonwealth. Such rules and regulations are to be adopted or modified or amended or canceled only after notice and hearing is provided with respect to promulgation of standards and policies.*

(3) *To hear appeals as provided in §§ 10-17.58 through 10-17.64.*

§ 62.1-13.5. Counties, cities and towns authorized to adopt wetlands zoning ordinance; terms of ordinance.—Any county, city or town may adopt the following ordinance:

Wetlands Zoning Ordinance

§ 1. The governing body of, acting pursuant to Chapter 2.1 of Title 62.1 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this ordinance regulating the use and development of wetlands.

§ 2. *Definitions.*—For the purposes of this ordinance:

(a) ~~“Commission Department”~~ means the ~~Virginia Marine Resources Commission~~ Department of Conservation, Development and Natural Resources.

(b) “Commissioner” means the Commissioner of ~~Marine Resources~~ the Department.

(c) “Person” means any corporation, association or partnership, one or more individuals, or any unit of government or agency thereof.

(d) “Governmental services” means any or all of the services provided by this to its citizens for the purpose of maintaining this and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public buildings.

(e) “Wetlands” means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this; and upon which is growing on the effective date of this act or grows thereon subsequent thereto, any one or more of the following:

saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoices*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile ecentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), threesquares (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* spp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's ticks (*Bidens* sp.), smartweeds, (*Polygonum* sp.), arrow-head (*Sagittaria* spp.), sweet flag (*Acorus calamus*), and switch grass (*Panicum virgatum*).

(f) "Wetlands board" or "board" means a board created as provided in § 62.1-13.6 of the Code of Virginia.

§ 3. The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

(a) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the marsh;

(b) The cultivation and harvesting of shellfish, and worms for bait;

(c) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting preserves; provided that no structure shall be constructed except as permitted in subsection (a) of this section;

(d) The cultivation and harvesting of agricultural or horticultural products; grazing and haying;

(e) Conservation, repletion and research activities of the ~~Virginia Marine Resources Commission Department~~ and, Virginia Institute of Marine Science, ~~Commission of Game and Inland Fisheries and other related conservation agencies~~;

(f) The construction or maintenance of aids to navigation which are authorized by governmental authority;

(g) Emergency decrees of any duly appointed health officer of a governmental subdivision acting to protect the public health;

(h) The normal maintenance, repair or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, State, county, city or town abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

(i) Governmental activity on wetlands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof.

§ 4. (a) Any person who desires to use or develop any wetland within this (county, city or town), other than for those activities specified in § 3 above, shall first file an application for a permit with the wetlands board and shall send copies to the ~~Commissioner~~, *members of the Marine Resources Board and the Director of the Marine Resources Division* and the Virginia Institute of Marine Science.

(b) An application shall include the following: the name and address of the applicant; a detailed description of the proposed activity and

a map, drawn to an appropriate and uniform scale, showing the area of wetland directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.

(c) A nonrefundable processing fee to cover the cost of processing the application of twenty-five dollars shall accompany each application.

§ 5. All applications and maps and documents relating thereto shall be open for public inspection at the office of the recording officer of this

§ 6. Not later than sixty days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the Commissioner, the owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Division of State Planning and Community Affairs, the Department of Game and Inland Fisheries, Water Control Board, the Department of Highways and governmental agencies expressing an interest therein shall be notified of the hearing by mail not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this (county, city or town). The costs of such publication shall be paid by the applicant.

§ 7. In acting on any application for a permit, the *wetlands* board shall grant the application upon the concurring vote of three members. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The *wetlands* board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the *wetlands* board, and the rationale for the decision. The *wetlands* board shall make its determination within thirty days from the hearing. If the *wetlands* board fails to act within such time, the application shall be deemed approved. Within forty-eight hours of its determination, the *wetlands* board shall notify the applicant and the Commissioner of such determination and if the *wetlands* board has not made a determination, it shall notify the applicant and the ~~Commission~~ Department that thirty days has passed and that the application is deemed approved.

The *wetlands* board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then the *wetlands* board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the ~~Commission~~ Department, the record shall be returned to the *wetlands* board. The record shall be open for public inspection.

tion at the office of the recording officer of this (county, city or town).

§ 8. The *wetlands* board may require a reasonable bond in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The *wetlands* board may, after hearing as provided herein, suspend or revoke a permit if the *wetlands* board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The *wetlands* board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. (a) In making its decision whether to grant, to grant in modified form, or to deny an application for a permit the *wetlands* board shall base its decision on these factors:

(1) Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.

(2) Impact of the development on the public health and welfare as expressed by the policy and standards of Chapter 2.1 of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the ~~Commission~~ Department.

(b) If the *wetlands* board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate or tend to violate the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the *wetlands* board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this (county, city or town), to provide governmental services and on the rights of any other person and to carry out the public policy set forth in Chapter 2.1 of Title 62.1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the *wetlands* board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate or tend to violate the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the *wetlands* board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

§ 10. The permit shall be in writing, signed by the chairman of the *wetlands* board and notarized.

§ 11. No permit shall be granted without an expiration date, and the *wetlands* board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the *wetlands* board granted such permit. The *wetlands* board, however, may, upon proper application therefor, grant extensions.

§ 62.1-13.5:1. *All duties and powers heretofore performed and exercised by the Commissioner of Marine Resources or the Commission of Marine Resources pursuant to any ordinance enacted by any county, city, or town pursuant to § 62.1-13.5 shall, after July one, nineteen hundred seventy-three, be performed and exercised by the Commissioner or the Department respectively. Any function permitted under such ordinance to be performed by the Marine Resources Commission or the Commission of Game and Inland Fisheries is, after such date, permitted to be performed by the Department. Any notice, permit, permit application, or record required in any provision of any such ordinance to be given, sent or transmitted to the Marine Resources Commission, Commissioner of Marine*

Resources, Department of Game and Inland Fisheries, or the Water Control Board may, after July one, nineteen hundred seventy-three, be given, sent or transmitted to the Commissioner, and shall, after July one, nineteen hundred seventy-three, be received by the Commissioner.

§ 62.1-13.7. Officers, meetings, rules, etc., of wetlands boards; records and reports.—The *wetlands* board shall elect from its membership a chairman and such other officers as it deems necessary who shall serve one-year terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than three members of the *wetlands* board. The *wetlands* board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the county, city or town and general laws of the Commonwealth, including this chapter. The *wetlands* board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body at least once each year, and a copy of its report to the ~~Commission~~ *Department*.

§ 62.1-13.8. The governing body of the county, city or town creating a wetlands board shall supply reasonable meeting space for the use of the *wetlands* board and such reasonable secretarial, clerical, legal and consulting services as may be needed by the *wetlands* board. The local governing body is authorized to expend the necessary public funds. Any *wetlands* board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the governing body which appointed him, after hearing held after at least fifteen days' notice.

§ 62.1-13.9. No person shall conduct any activity which would require a permit under a wetlands zoning ordinance unless he has a permit therefor. Until such time as the county, city or town in which a person proposes to conduct an activity which would require a permit under a wetlands zoning ordinance adopts the wetlands zoning ordinance such person shall apply for a permit directly to the ~~Commission~~ *Department* except as provided in § 62.1-13.6 (b). If an applicant desires to use or develop wetlands owned by the Commonwealth, he shall apply for a permit directly to the ~~Commission~~ *Department* and in addition to the application fee required by the wetlands zoning ordinance, he shall pay such fees and royalties as provided in § 62.1-3.

The ~~Commission~~ *Department* shall process such application in accordance with the provisions of the wetlands zoning ordinance and the Commissioner shall sign such permit; ~~provided, however, that the Commission shall have the authority to designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required in § 62.1-13.5, and thereafter report such findings and recommendations to~~

§ 62.1-13.11. The ~~Commission~~ *Commissioner* shall review a decision of a wetlands board made under a wetlands zoning ordinance when:

(1) An appeal is taken from such decision by the applicant for a permit or by the county, city or town where the wetlands are located; or

(2) The Commissioner requests such review *upon his own motion or upon the request of the Board*. The Commissioner shall request such review only when he reasonably believes that the policy and standards of this chapter have not been adequately achieved or that any guidelines which may have been promulgated by the ~~Commission~~ *Marine Resources Board* have not been reasonably accommodated. In order to make such a request, the Commissioner must notify the *wetlands* board and the applicant and the county, city or town where the wetlands are located within ten days of receipt of notice to the Commissioner of the decision of the *wetlands* board.

(3) Twenty-five or more freeholders of property within the county,

city or town in which the proposed project is located sign and submit a petition to the ~~Commission~~ *Commissioner*, provided, such petition must include a statement of particulars setting forth those specific instances wherein the petitioners do allege that the board did fail to follow the policy, standards or guidelines of this chapter.

(4) Where not otherwise provided, the foregoing requests for review or appeal shall be made within ten days from date of initial determination by the *wetlands* board; and provided that the ~~Commission~~ *Commissioner* shall hear and decide such review or appeal within forty-five days after notice of such review or appeal is received a continuance may be granted by the ~~Commission~~ *Commissioner* on a motion of the applicant or the freeholders as specified in § 62.1-13.11 (3) or the county, city or town where the wetlands are located.

§ 62.1-13.12. Procedure for review.—(a) The Commissioner shall cause notice of the review or appeal to be given to the *wetlands* board, to the applicant, to the freeholders specified in § 62.1-13.11 (3) and to the county, city or town where the wetlands are located.

(b) The ~~Commission~~ *Commissioner* shall hear the appeal or conduct the review on the record transmitted by the *wetlands* board to the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the ~~Commission~~ *Commissioner*, in ~~its~~ *his* discretion, may receive such other evidence as the ends of justice require.

§ 62.1-13.13. The ~~Commission~~ *Commissioner* shall modify or reverse the decision of the wetlands board:

(1) If the decision of the wetlands board will not adequately achieve the policy and standards of this chapter or will not reasonably accommodate any guidelines which may have been promulgated by the ~~Commission~~ *Board* hereunder; or

(2) If the substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions or decisions are

(a) In violation of constitutional provisions; or

(b) In excess of statutory authority or jurisdiction of the wetlands board; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by the evidence on the record considered as a whole; or

(f) Arbitrary, capricious, or an abuse of discretion.

§ 62.1-13.14. The ~~Commission~~ *Commissioner* shall notify the parties of ~~its~~ *his* determination within forty-eight hours after the appeal or review.

§ 62.1-13.15. Appeals to courts.—(1) An appeal from any decision of the ~~Commission~~ *Commissioner*, *subject to the requirements of §§ 10-17.58 through 10-17.64, regarding Board review*, concerning an application for a permit granted or denied directly by the ~~Commission~~ *Commissioner*, or from any decision of the ~~Commission~~ *Commissioner* on review of or appeal from a decision of the *wetlands* board, or from any decision of the *Board* pursuant to §§ 10-17.58 through 10-17.64 may be taken by the applicant, any of the freeholders as set forth in § 62.1-13.11 (3), or by the county, city or town where the wetlands are located, within thirty days after the rendering of such decision of the ~~Commission~~ *Commissioner*, to the circuit court or corporation court having jurisdiction in the governmental subdivision in which the wetlands involved in the decision are located.

(2) Judicial review shall be in accord with the provisions of § 9-6.13, except that the circuit court or corporation court shall modify or reverse the decision of the ~~Commission~~ *Commissioner or Board* or remand

the case for further proceedings :

(a) If the decision of the ~~Commission~~ *Commissioner or Board* will not adequately achieve the policy and standards of this chapter or will not reasonably accommodate any guidelines which may have been promulgated by the ~~Commission Board~~; or

(b) If the substantial rights of the appellant have been prejudiced because of findings, conclusions or decisions are

(1) In violation of constitutional provisions; or

(2) In excess of statutory authority or jurisdiction of the ~~Commission Commissioner~~; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Unsupported by the evidence on the record considered as a whole; or

(6) Arbitrary, capricious, or an abuse of discretion.

(c) From the final decision of the circuit court or corporation court an appeal shall lie to the Supreme Court in the manner provided by law for appeals in civil cases.

§ 62.1-13.16. Investigations and prosecutions.—The ~~Commission Commissioner~~ shall have the authority to investigate all projects whether proposed or ongoing which alter wetlands. The ~~Commission Commissioner~~ shall have the power to prosecute all violations of any order, rule, or regulation of the ~~Commission Board~~, or of a wetlands board, or violation of any provision of this chapter.

§ 62.1-13.17. The ~~Commission Department~~ may receive gifts, grants, bequests, and devises of wetlands and of money which shall be taken and held for the uses prescribed by the donor, grantor, or testator and in accord with the purposes of this chapter. The ~~Commission Department~~ shall manage such wetlands in such a way as to maximize their ecological value and in accord with the purposes of this chapter.

§ 62.1-13.18. Violation of order, rules and regulations.—(a) Any person who knowingly, intentionally, negligently or continually violates any ~~order~~, rule or regulation of the ~~Commission Board~~, or of a wetlands board established pursuant to this chapter or violates any provision of this chapter or of a wetlands zoning ordinance enacted pursuant to this chapter or any provision of a permit granted by a wetlands board or *any permit, ruling or order* or the ~~Commission Commissioner~~ pursuant to this chapter shall be guilty of a misdemeanor. Following a conviction, every day the violation continues shall be deemed a separate offense.

§ 62.1-13.19. Nothing in this chapter shall affect the ~~Commission's Department's~~ sole jurisdiction over areas and activities as defined by Title 28.1 or § 62.1-3 of this Code.

CHAPTER 3.3

ARTICLE 1.

§ 62.1-44.45. *The short title of this chapter is State Water Resources Law. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality State waters and restore all other State waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them, (2) safeguard the clean waters of the State from pollution, (3) prevent any increase in pollution, and (4) reduce existing pollution, in order to provide for the health, safety, and welfare of the citizens of the Commonwealth.*

§ 62.1-44.46. *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) *“Department” means the Department of Conservation, Development and Natural Resources;*

(2) *“Commissioner” means the Commissioner of the Department;*

(3) *“Board” means the Water Resources Board;*

(4) *“Certificate” means any certificate issued by the Commissioner;*

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

(6) *“Owner” means the State or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and 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;*

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

(8) *“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;*

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

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

(11) *“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;*

(12) *“Sewerage system” means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal;*

(13) *“The law” or “this law” means the law contained in this chapter as now existing or hereafter amended;*

(14) *“Special order” means a special order issued under § 62.1-44.52(6);*

(15) *“Ruling” means a ruling issued under § 62.1-44.52(7);*

(16) *“Regulation” means a regulation issued under § 62.1-44.51*

(2);

(17) "Standards" means standards established under § 62.1-44.51

(1); and

(18) "Policies" means policies established under § 62.1-44.51(1).

§ 62.1-44.47. (1) No right to continue existing quality degradation in any State water shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future discharge of sewage, industrial wastes or other wastes or other action by any owner. The right and control of the State in and over all State waters is hereby expressly reserved and reaffirmed. (2) Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at high quality; provided that the Commissioner has the power to authorize any project or development, which would constitute a new or an increased discharge of effluent to high quality water, when it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development; and provided, further, that the necessary degree of waste treatment to maintain high water quality will be required where physically and economically feasible. Present and anticipated use of such waters will be preserved and protected.

§ 62.1-44.48. It is hereby declared to be against public policy for any owner who does not have a certificate issued by the Commissioner to (1) discharge into State waters inadequately treated 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.

§ 62.1-44.49. This chapter is intended to supplement existing laws and no part thereof shall be construed to repeal any existing law 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.

§ 62.1-44.49:1. The General Administrative Agencies Act shall apply to all acts of the Department, including all actions or inactions of the Board or the Commissioner or their delegates; provided, that, to the extent that any provision of the Environmental Coordination Act of 1973 or any other provision of law is inconsistent with the General Administrative Agencies Act, such provision shall control. To the extent that any provision of the Environmental Coordination Act of 1973 is inconsistent with any other provision of law which pertains to the Department, the provision of the Environmental Coordination Act of 1973 shall control.

ARTICLE 2.

§ 62.1-44.50. The State Water Control Board and all offices created therein are abolished. The powers and duties heretofore exercised by such Board and by the officers thereof shall hereafter be vested in the Department of Conservation, Development and Natural Resources and shall be exercised by or as delegated by the Commissioner, unless otherwise expressly designated to be exercised by the Water Resources Board. The title to and control of all property and records of every kind and description formerly held or controlled by the State Water Control Board shall be vested in the Commonwealth of Virginia, Department of Conservation, Development and Natural Resources, and all personnel of said Board shall be transferred to the Department. All rules and regulations promulgated by and all permits and certificates issued by the State Water

Control Board shall remain in effect as if promulgated or issued by the Department until subsequently modified or rescinded as may be required by law.

§ 62.1-44.51. It shall be the duty of the Board and it shall have the authority:

(1)(a) *To establish such standards of quality and policies for any State waters consistent with the general policies set forth in this chapter, and to modify, amend or cancel any such standards or policies established.*

(b) *Such standards and policies are to be adopted or modified, amended or canceled only after a hearing held after publication of a notice of the time, place and purpose thereof at least once in at least one newspaper of general circulation in the locality to which such standards and policies apply not less than thirty nor more than sixty days prior to the day on which the public hearing on the adoption, modification, amendment or cancellation of such standards and policies will be held. Such standards and policies or the modification, amendment or cancellation of such standards and policies will become effective thirty days after they are filed with the Secretary of the Commonwealth.*

(2) *To adopt such regulations as it deems necessary to enforce the general water quality management programs of the State, such regulations to be effective thirty days after they are filed in the office of the Secretary of the Commonwealth. Such regulations are to be adopted or modified or amended or canceled only after notice and hearing as provided with respect to standards and policies in § 62.1-44.51 (1) (b) hereof.*

(3) *To establish policies and programs for effective area-wide or basin-wide water quality control and management. The Commissioner may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. In conjunction with this, the Commissioner, when considering proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water quality management and pollution control plan in the watershed or basin as a whole. In making such determinations, the Commissioner is to seek the advice of local, regional, or State planning authorities.*

(4) *To establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter; provided, however, that no treatment will be less than secondary or its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes of this chapter.*

(5) *To make rules for its own organization; and to have such other general and specific powers and duties as may be conferred upon it by law.*

(6) *To hear appeals as provided in §§ 10-17.58 through 10-17.64.*

§ 62.1-44.52. It shall be the duty of the Commissioner and he shall have the authority:

(1) *To exercise general supervision and control over the quality of all State waters and to administer and enforce this chapter, all certificates, rulings and special orders promulgated by him thereunder, and all standards, policies, rules and regulations promulgated by the Board thereunder.*

(2) *To study and investigate all problems concerned with the quality of State waters and to make reports and recommendations thereon.*

(3) *To conduct or have conducted scientific experiments, investigations, studies and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Commissioner may cooperate 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 cooperative 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, studies, and research shall be returned to the contributors.

(4) To issue certificates for the discharge of sewage, industrial wastes and other waste 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 hearings, 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 Commissioner and the owner involved, the hearing and notice may be dispensed with.

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

(6) (a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by § 62.1-44.46 (7) of State waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate issued by the Commissioner to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Commissioner to comply with such directive, and (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Commissioner.

(b) 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 five days after service upon such owner by certified mail sent to his last known address, and the time limit specified shall be counted from the date of mailing; provided that if the Commissioner finds that any such owner is grossly affecting (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, he 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 Commissioner finds that an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, he may proceed in accordance with § 62.1-44.61.

(c) Nothing in this section shall limit the Commissioner's authority to proceed against such owner directly under §§ 62.1-44.61 or 62.1-44.70 for violations of §§ 62.1-44.54, 62.1-44.55 or 62.1-44.57 without the prior issuance of a special order or an emergency order.

(7) To make such rulings under §§ 62.1-44.54, 62.1-44.55 and 62.1-44.57 as may be required upon requests or applications to the Commissioner, the owner or owners affected to be notified by certified mail as soon as practicable after the Commissioner makes them and such rulings to become effective upon such notification.

(8) To investigate any large-scale killing of fish.

(a) Whenever the Commissioner shall determine that any owner, whether or not he shall have been issued a certificate for discharge of wastes, has discharged sewage, industrial wastes, or other wastes into State waters in such quantity, concentration or manner that fish are killed as a result thereof, he may effect such settlement with the owner as will cover the costs incurred by the Department in investigating such killing of fish, plus the replacement value of the fish destroyed, or as he deems proper, and if no such settlement is reached within a reasonable time the Commissioner shall be authorized to bring a civil action in the name of the Department to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) 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.

(c) For the purposes of this subsection the Department shall be deemed the owner of the fish killed and the proceedings shall be as though the Department 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.

(d) The proceeds of any recovery had under this subsection shall, when received by the Department, be applied, first, to reimburse the Department for any expenses incurred in investigating such killing of fish, the balance to be used for such fisheries' management practices as in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of wastes, including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any such funds received are hereby appropriated for that purpose.

(e) 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 Commissioner against any owner.

(9) To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in this State.

(10) To adopt rules for the internal management of the Department.

§ 62.1-44.53. Nothing contained in this chapter shall be construed to empower the Commissioner to require the State, or any political subdivision thereof, to construct any sewerage system or sewage treatment works necessary to (1) upgrade the present level of treatment in existing systems or works to abate existing pollution of State waters, or (2) expand a system or works to accommodate additional growth, unless the Commissioner shall have previously committed himself to provide financial assistance from federal funds equal to the maximum amount provided for in the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) and as supplemented by State funds as allocated by the Water Resources Board or unless the State or political subdivision agrees, or is directed by the Commissioner with the concurrence of the Governor, to proceed with such construction, subject to the provisions of § 206(p) of such federal act.

The foregoing restriction shall not apply to those cases where existing sewerage systems or sewage treatment works cease to perform in accordance with their approved certificate requirements.

ARTICLE 3.

§ 62.1-44.54. (1) *Any owner who erects, constructs, opens, re-opens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to State waters shall first provide facilities approved by the Commissioner for the treatment or control of such industrial wastes or other wastes.*

Application for such discharge shall be made to the Commissioner and shall be accompanied by pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and detail satisfactory to the Commissioner.

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

(b) *The Commissioner shall review the application and the information that accompanies it as soon as practicable and make a ruling within a period, unless otherwise specified by law, of four months from the date the application is filed with the Commissioner approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Commissioner 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 Commissioner shall notify the owner as to what measures, if any, the owner may take to secure approval.*

(2) (a) *Any owner operating under a valid certificate issued by the Commissioner who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Commissioner within a reasonable time to meet such new requirements; provided, however, that such facilities shall be reasonable and practicable of attainment giving consideration to the public interest and the equities of the case. The Commissioner may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Commissioner and the owner involved, the hearing and notice may be dispensed with.*

(b) *The Commissioner shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under § 62.1-44.52(6).*

§ 62.1-44.55. (1) *Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-44.46(10), 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 Commissioner install facilities approved by the Commissioner or adopt such measures approved by the Commissioner 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 Commissioner to provide facilities or adopt such measures shall make application therefor to the Commissioner. 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 Commissioner.*

(3) *The Commissioner shall review the application and the information that accompanies it as soon as practicable and make a ruling within a period, unless otherwise specified by law, of four months from the date the application is filed with the Commissioner approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Commissioner shall grant a certificate for the handling, storing, distribution or production of such other wastes. If the application is disapproved, the Commissioner shall notify the owner as to what measures the owner may take to secure approval.*

ARTICLE 4.

§ 62.1-44.56. (1) *All sewerage systems and sewage treatment works shall be under the general supervision of the Commissioner.*

(2) *The Department 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.*

(3) *It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any State waters to furnish to the Commissioner, upon his request 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 Commissioner with such available information as the Commissioner requires.*

§ 62.1-44.57. (1) *Before any owner erects, constructs, opens, expands, or operates a sewerage system or sewage treatment works designed to serve more than four hundred persons, and which will have a potential discharge or actual discharge to State waters, such owner shall file in duplicate with the Commissioner a copy of pertinent plans, specifications, maps, and such other information as may be required, in scope and detail satisfactory to the Commissioner.*

(2) *If the plans involve facilities from which there is or is to be a discharge to State waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Commissioner may prescribe.*

(3) *The Commissioner shall review the plans and make a ruling within two months approving or disapproving the plans and stating the grounds for conditional approval or disapproval. If they are approved, the Commissioner shall grant a certificate authorizing construction of the facilities.*

(4) *Any owner operating under a valid certificate issued by the Commissioner who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Commissioner within a reasonable time to meet such new requirements. The Commissioner may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Commissioner and the owner involved, the hearing and notice may be dispensed with.*

(5) *The Commissioner shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under § 62.1-44.52(6).*

(6) *Nothing in this section shall limit the power of the Commis-*

sioner in the control of sewerage systems or sewage treatment works serving less than four hundred persons.

ARTICLE 5.

§ 62.1-44.58. Any duly authorized agent of the Commissioner 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 necessary in the enforcement of the provisions of this chapter.

§ 62.1-44.59. The Commissioner may require every owner to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of this chapter. No owner shall be required at any time to disclose any secret formulae, secret processes, or secret methods used by him or under his direction.

§ 62.1-44.60. 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.

§ 62.1-44.61. Any owner violating or failing, neglecting or refusing to obey any water quality standard, policy, rule or regulation adopted or established by the Board, or any order, ruling, water quality standard, or requirement of or any provision of any certificate made or issued by the Commissioner or any provisions of this chapter may be compelled in a proceeding instituted in any appropriate court by the Commissioner to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

§ 62.1-44.62. (1) The validity of any standard, policy or regulation may be determined upon petition for a declaratory judgment thereupon, brought within ninety days after the effective date thereof, addressed to the Circuit Court of the City of Richmond by any owner who might be adversely affected by its enforcement and who alleges that it is invalid. The Board shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the Board to pass upon the validity of such standard, policy or regulation.

(2) The court shall declare the standard, policy or regulation invalid if it finds that it is unconstitutional or exceeds the statutory authority of the Board or was adopted without compliance with the procedures prescribed in this chapter or is unreasonable, arbitrary, capricious, and not in the public interest.

(3) An appeal may be had from the decision of the court to the Supreme Court as provided by law.

§ 62.1-44.63. Any owner under §§ 62.1-44.54, 62.1-44.55, and 62.1-44.57 aggrieved by any action of the Commissioner taken without a formal hearing, or by inaction of the Commissioner, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Commissioner in accordance with the provisions of § 10-17.56.

§ 62.1-44.64. (1) The hearings held under this chapter may be conducted by the Commissioner himself or by hearing officers designated by him who shall have the power and authority to conduct such hearings in the name of the Commissioner at any time and place.

(2) A verbatim record of the proceedings of such hearings shall be taken and filed with the Commissioner. Depositions may be taken and read as in actions at law.

(3) The Commissioner shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such

subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be reported by the Commissioner to the Circuit Court of the City of Richmond and the proceedings thereon shall be as provided in § 8-302. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

§ 62.1-44.65. *In all hearings under this chapter:*

(1) *All relevant and material evidence shall be received, except that (a) the rules relating to privileged communications and privileged topics shall be observed; (b) hearsay evidence shall be received only if the declarant is not readily available as a witness; and (c) secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a witness or document is readily available, the Commissioner or hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence is the more effort should be made to produce the eyewitness or the original document.*

(2) *All reports of inspectors and subordinates of the Commissioner and other records and documents in the possession of the Commissioner bearing on the case shall be introduced by the Board at the hearing.*

(3) *Subject to the provisions of paragraph (1) of this section every party shall have the right to cross-examine adverse witnesses and any inspector or subordinate of the Commissioner whose report is in evidence and to submit rebuttal evidence.*

(4) *The decision of the Commissioner shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.*

§ 62.1-44.66. *To be valid and operative, the decision by the Commissioner rendered pursuant to hearings under §§ 62.1-44.52 (6) and 62.1-44.63 must be reduced to writing and contain the explicit findings of fact and conclusions of law upon which the decision of the Commissioner is based and certified copies thereof must be mailed by certified mail to the parties affected by it.*

§ 62.1-44.67. (1) *Any owner aggrieved by a final decision of the Board under §§ 10-17.58 through 10-17.64 or of the Commissioner under §§ 62.1-44.52 (4), 62.1-44.52 (6), 62.1-44.54, 62.1-44.55, 62.1-44.57 or 62.1-44.63, subject to the requirements of §§ 10-17.58 through 10-17.64, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under this chapter either in the Circuit Court of the City of Richmond or in any court of record having jurisdiction in the city or county in which such owner resides, or in which is located the principal office of his business, or in which is located his property affected by the decision complained of.*

(2) *Proceedings for review shall be instituted by filing a notice of appeal with the Commissioner within thirty days after the date of the mailing of the final decision of the Board and by giving a copy thereof to all other parties.*

(3) *With his notice of appeal, or within thirty days thereafter, the appellant shall deliver to the Commissioner a transcript of the testimony if it was taken down in writing, or, if it was not taken down in writing, a statement of it in narrative form.*

(4) *Within thirty days thereafter, the Commissioner shall transmit to the clerk of the court to which the appeal is taken:*

(a) *A copy of the request, if any, for, or notice of, the formal hearing;*

(b) *A copy of the final decision appealed from;*

(c) *A copy of the notice of appeal;*

(d) *The transcript or statement of the testimony filed by appellant, together with a certificate that it is correct except in specified particulars;*

(e) The exhibits.

(5) The failure of the Commissioner to transmit the record within the time allowed shall not prejudice the rights of the appellant. The court, on motion of the appellant, may issue a writ of certiorari requiring the Commissioner to transmit the record on or before a certain date.

(6) The court, sitting without a jury, shall hear the appeal on the record transmitted by the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the court, in its discretion, may receive such other evidence as the ends of justice require.

(7) The court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the findings, conclusions or decisions are (a) in violation of constitutional provisions; or (b) in excess of statutory authority or jurisdiction of the Commissioner; or (c) made upon unlawful procedure; or (d) affected by other error of law; or (e) unsupported by the evidence on the record considered as a whole; or (f) arbitrary, capricious, or an abuse of discretion.

(8) The filing of a notice of appeal shall not operate to stay the enforcement of the order. The appellant, at any time after the filing of his notice of appeal, may apply to the court to which he has appealed for a stay. The application shall be on motion after notice to the Commissioner, and a stay pending the appeal shall be granted unless it appears to the court that immediate enforcement of the order is essential to the public health or safety. In the order granting a stay, the court may make any provision required to serve the ends of justice including the granting or continuing in effect of a certificate.

§ 62.1-44.68. From the final decision of the court of record an appeal shall lie to the Supreme Court in the manner provided by law for appeals in civil cases.

ARTICLE 6.

§ 62.1-44.69. It shall be unlawful for any owner to fail to comply with any special order issued by the Commissioner, which has become final under the provisions of this chapter, or to discharge sewage, industrial wastes or other wastes in violation of any condition contained in a certificate issued by the Commissioner or in excess of the wastes covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Commissioner.

§ 62.1-44.70. Any owner violating any provision of this chapter, or failing, neglecting or refusing to comply with any final special order of the Commissioner, or of a court, lawfully issued as herein provided, shall be fined not less than one hundred dollars nor more than five thousand 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 in violation of this chapter to abatement as a nuisance.

ARTICLE 7.

§ 62.1-44.71. The Board is empowered and directed to adopt and promulgate all necessary rules and regulations for the purpose of controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels on all navigable and nonnavigable waters within this State.

In formulating such rules and regulations, the Board shall consult with the State Department of Health for the purpose of coordinating such rules and regulations with the activities of such agency.

Violation of such rules and regulations shall, upon conviction, be

a misdemeanor. Every law-enforcement officer of this State and its subdivisions shall have the authority to enforce the rules and regulations adopted and promulgated under the provisions of this section.

§ 62.1-44.72. (a) *No owner or operator of any vessel on the navigable waters of this State shall cause or permit the discharge of any petroleum product into such waters in an amount sufficient to cause damage to aquatic life therein or to the land or beaches adjacent thereto.*

(b) *The Commissioner may proceed against any person violating subsection (a) of this section as hereinabove provided in this chapter, and in addition may require such person to take such action as may be required to abate any pollution so caused.*

(c) *In the event any such discharge occurs, and it cannot be determined immediately what vessel or vessels were responsible therefor, the Commissioner may, with the consent of the Governor, take such action as is necessary to abate such pollution, including the engagement of contractors or other persons competent to eliminate the pollution. The cost of such abatement shall be collectible from the person causing or permitting such discharge, if his identity can be determined. If it is not possible to determine the identity of such person, the cost of the abatement of such pollution shall be paid from the General Fund of the State treasury.*

§ 62.1-44.73. *Being cognizant of the crucial importance of the State's water resources to the health and welfare of the people of Virginia, and of the need of a water supply to assure further industrial growth and economic prosperity for the State, and recognizing the necessity for continuous cooperative planning and effective State-level guidance in the use of water resources, the Department is assigned the responsibility for planning the development, conservation and utilization of Virginia's water resources.*

The Commissioner shall continue the study of existing water resources of this State, means and methods of conserving and augmenting such water resources, and existing and contemplated uses and needs of water for all purposes. Based upon these studies and such policies as had been initiated by the State Water Control Board and after an opportunity has been given to all concerned State agencies and political subdivisions to be heard, the Commissioner shall recommend to the Board, and the Board, with such modifications as it may deem appropriate, shall formulate a coordinated policy for the use and control of all the water resources policy. The Board shall, among other things, take into consideration but not be limited to the following principles and policies:

(1) *Existing water rights are to be protected and preserved subject to the principle that all of the State waters belong to the public for use by the people for beneficial purposes without waste;*

(2) *Adequate and safe supplies should be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses;*

(3) *It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the State as a whole;*

(4) *In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;*

(5) *The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged;*

(6) *Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;*

(7) *Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution.*

The statement of water resource policy shall be revised from time to time whenever the Board shall determine it to be in the public interest.

The initial statement of State water resource policy and any subsequent revisions thereof shall be furnished by the Commissioner to all State agencies and to all political subdivisions of the State.

§ 62.1-44.74. *The Commission shall upon application of any State agency or political subdivision, and may, upon its own motion, recommend a plan to resolve any conflict as to actual or proposed water use or other practice directly affecting water use that involves a potential or existing conflict between water use functions under the jurisdiction of different State agencies. If requested by any State agency or political subdivision directly affected, or at the Commissioner's discretion, the Commissioner shall hold public hearings on such question at which all persons concerned shall be heard.*

§ 62.1-44.75. (a) *The Board shall devise plans and programs for the development of the water resources of this State in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. These plans may include comprehensive water and related land resource plans for each major river basin of this State, including specifically the Potomac-Shenandoah River basin, the Rappahannock River basin, the York River basin, the James River basin, the Chowan River basin, the Roanoke River basin, the New River basin, the Holston River basin, the Clinch River basin, the Big Sandy River basin, and for those areas in the Tidewater and elsewhere in the State not within these major river basins, or for portions of such basins or areas. The Board may, and upon the written request of a political subdivision of the State located in whole or in part in any such basin or area shall, as to such basin or area, establish advisory committees to assist it in the formulation of such plans or programs. In this connection, the Board may cooperate with all branches or agencies of the federal government, with all branches or agencies of the government of any state in a river basin located within that state and Virginia, with the political subdivisions of the State, and with all persons and corporations interested in or directly affected by any proposed or existing plan or program.*

(b) *Except as otherwise authorized by this chapter or any other provision of law the Board shall not take action to implement such plans or programs but shall recommend to the General Assembly any additional legislation that the Board may deem necessary or desirable for the accomplishment of such plans or programs.*

§ 62.1-44.76. *The Commissioner may make available technical advice and information on water resources to any agency or political subdivision of this State, any committee, association or person interested in the conservation or use of water resources, any interstate agency or any agency of the federal government, all for the purpose of assisting in the preparation or effectuation of any plan or program concerning the use or control of the water resources of this State in harmony with the State water resources policy or otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this State.*

§ 62.1-44.77. *The Commissioner shall advise the Governor and the*

General Assembly as to all matters relating to the State's water resources policy and shall report to them annually on the status of the State's water resources.

§ 62.1-44.78. (1) *In all matters directly related to conservation or use of the State's water resources, except as otherwise provided by law, the Commissioner is authorized to speak and act for the State in all relations with the federal government or with the government of other states or with interstate agencies or authorities directly concerning conservation or use of the State's water resources.*

(2) *In regard to such matters, the Commissioner, or such person or State agency as may be designated by him, may appear and testify for the State before any committee of the United States Congress or any branch or agency of the federal government or the legislature or any court or commission of any state.*

§ 62.1-44.79. (1) *In order to assist the Commissioner in carrying out his functions as provided by law, the Commissioner may:*

(a) *Call upon the other agencies and political subdivisions of this State to furnish or make available to him information concerning the water resources of this State which such State agencies or political subdivisions have acquired or may acquire in the performance of their functions.*

(b) *Cooperate with the other agencies or political subdivisions of the State in utilizing the services, records and other facilities of such agencies or political subdivisions to the maximum extent practicable.*

(2) *All officers and employees of the State or the political subdivisions of the State shall cooperate with the Department in the discharge of its duties and in effectuating the water resources policy of the State.*

(3) *Upon receipt and approval by the Commissioner of a claim therefor, any special or extraordinary expense incurred by any other agency or political subdivision of this State in cooperating with the Commissioner under subsections (1) and (2) of this section shall be paid to such other agency or political subdivision of the State.*

§ 62.1-44.80. *In addition to other powers conferred by the foregoing sections, the Commissioner shall have the following powers:*

(a) *To administer all funds available to him for carrying out the purposes and duties prescribed in §§ 62.1-44.73 through 62.1-44.80;*

(b) *To disburse funds to any department, commission, board, agency, officer or institution of the State, or any political subdivision thereof for carrying out such purposes;*

(c) *To apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from federal programs respecting or related to conservation or development of the State's water and related land resources;*

(d) *To act either independently or jointly with any department, commission, board, agency, officer or institution of the State or any political subdivision thereof in order to carry out his powers and duties;*

(e) *To accept gifts, requests and any other things to be used for carrying out his powers and duties.*

§ 62.1-44.81. (a) *In addition to other powers conferred by this title, the Commissioner shall have the power to regulate discharges from artesian wells. The owner of any flowing artesian well which has been abandoned, or from which no part of the flow is put to use by the owner or tenant of the land on which such well is situated, and the owner of any flowing artesian well from which water is pumped directly, shall cap or otherwise secure the mouth of such well so as not to permit the discharge from the well of water that is allowed to run to waste and not put to useful service. Any person failing or refusing to so prevent such discharge from any such well shall be guilty of a misdemeanor and upon conviction shall*

be fined not less than ten dollars nor more than one hundred dollars and may be imprisoned in jail for not more than ten days.

(b) In any case in which a person owning or controlling any such artesian well fails or refuses to stop its discharge or to regulate the discharge therefrom as required in paragraph (a), the Commissioner shall notify such person under the provisions of §§ 8-51 or 8-71 that on a day specified in such notice he will stop or regulate the discharge from such well, and the costs incident thereto, such cost not to exceed twenty-five dollars, shall be a charge against such person or the property on which such well is located and be a lien on such property.

(c) The Commissioner on the day specified in the notice shall enter upon the land or other property of the person so notified and stop or regulate the discharge from such well at the expense of the owner.

(d) The Commissioner shall record a statement showing the cost of such work in the office of the clerk of the court of the county or city wherein deeds to land are recorded and in which the property is located. Such statement shall be recorded in the judgment lien docket book and indexed in the name of the Commonwealth and of the person owning such property. Such charge shall be valid against subsequent purchasers or judgment lien creditors when recorded in the clerk's office. Upon the recording of any such statement the Commissioner shall institute proceedings to collect the amount due the Commonwealth hereunder.

§ 62.1-44.82. (a) Nothing in this chapter shall be construed as superseding any provisions of Chapter 1 (§ 21-1 et seq.) of Title 21 of the Code of Virginia, or as limiting or affecting any powers, duties or responsibilities conferred or imposed heretofore or hereafter on the Virginia Soil and Water Conservation Commission.

(b) Nothing in this chapter shall be construed as altering, or as authorizing any alteration of, any existing riparian rights or other vested rights in water or water use.

§ 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 sea-plane 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 source 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 motor boat subject to an interest in another person, reserved or created by agreement and securing payment of 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~~ Department" means the ~~Commission of Game and Inland Fisheries~~ Department of Conservation, Development and Natural Resources.

(8) "Commissioner" means Commissioner of the Department.

(9) "Board" means the Board of Game and Inland Fisheries.

§ 62.1-168. Commissioner of Conservation, Development and Natural Resources to administer chapter; funds for administration.—(a) It shall

be the duty of the ~~Commission of Game and Inland Fisheries~~ *Commissioner* 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 Motor boat 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. 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 to be designated as the Motorboat and Water Safety Fund. Such moneys shall be made available to the ~~Commission~~ *Commissioner* 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 Board~~ 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 Board~~ 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 Board~~ 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.

§ 62.1-170. Application for numbers; certificate of number; 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~~ *Commissioner* on forms approved by ~~it~~ *him*. The application shall be signed by the owner, or his agent, of the motorboat and shall be accompanied by a fee of eight dollars, provided that for an owner, other than a manufacturer or dealer, of more than ten motorboats numbered by this State, the fee shall be eight dollars each for the first ten such boats and three dollars for each additional boat. Upon receipt of the application in approved form the ~~Commission~~ *Commissioner* shall have the same entered upon the records of ~~its~~ *his* 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 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~~ *Commissioner*, 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 Board~~ 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, except that the certificate of number for any vessel less than twenty-six feet in length, and leased or rented to another for the lessee's noncommercial use for less than twenty-four hours, may be retained on shore by the vessel's owner or his representative at the place at which the vessel departs and returns to the possession of the owner or his representative, provided the vessel is appropriately identified as to its owner while in use under such lease or rental.

The ~~Commission~~ Commissioner is authorized and empowered to cancel and recall any certificate of number issued by the ~~Commission~~ Commissioner 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~~ Commissioner 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 overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this chapter by the ~~Commission~~ Department shall be in conformity therewith.

(e) The ~~Commission~~ Commissioner 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~~ Board, shall be valid as if awarded directly by the ~~Commission~~ Commissioner.

(f) All records of the ~~Commission~~ Department made or kept pursuant to this section shall be public records but shall be open for inspection subject to such conditions as the ~~Commission~~ Board, upon recommendation of the Commissioner, may prescribe. The ~~Commission~~ Commissioner 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~~ Commissioner 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.

(h) [Repealed.]

(i) The owner shall furnish the ~~Commission~~ *Commissioner* 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 motor boat, 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~~ *Commissioner* 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~~ *Commissioner* his new address.

The ~~Commission~~ *Board* 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.

(1) 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~~ *Commissioner*.

(4) Upon receipt by the ~~Commission~~ *Commissioner* of a properly completed application and fee, ~~it~~ *he* 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.

§ 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~~ *Commissioner* to authorize the placing of markers approved by the ~~Commission~~ *Board* around a public swimming or bathing area.

(b) The ~~Commission~~ *Commissioner*, upon receiving such petition and sufficient proof and such other information as the ~~Commission~~ *Commissioner* 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.

§ 62.1-172. Classification of motor boats; required lights and equipment; rules and regulations; rowboats.—(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 forepart 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.

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

a. A bright white light in the forepart 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 sidelights 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 sidelights, 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~~ Board.

(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 Board~~ 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 Board~~ 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 Board~~, 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 Board~~.

(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 Board~~ 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 Board~~ 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 or the United States Secretary of Transportation.

(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) Rowboats, 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.

§ 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; provided, however, that no boat shall be exempted from numbering under this subsection after midnight, September thirty, nineteen hundred seventy-two.

(8) A motorboat belonging to a class of vessels which has been exempted from numbering by a regulation adopted by the ~~Commission~~ *Board* after the ~~Commission~~ *Board* has found that applicable federal law or federal regulation has exempted, or permitted the exemption of, such class of vessels.

§ 62.1-177. Duty of operator involved in collision, accident or other casualty; immunity from liability; report of collision, etc.; summons in lieu of arrest.—(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. Any person who complies with this subsection or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment or other assistance where the assisting person acts as an ordinary, reasonably prudent man would have acted under the same or similar circumstances.

(b) In 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~~ *Commissioner* 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.

§ 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~~ *Commissioner* pursuant to § 62.1-177 (b) shall be transmitted to said official or agency of the United States.

§ 62.1-181. Regattas, races, marine parades, tournaments or exhibitions.—(a) The ~~Commission~~ *Board* 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~~

Commissioner 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, motor boat, or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without authorization of the ~~Commissioner~~ *Commissioner* in writing, or as the Board may specify.

(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.

§ 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 Board~~ *Commission Board* 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 Board~~ *Commission Board* 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 Board~~ *Commission Board*. 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 Board~~ *Commission Board*, 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.

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

2. §§ 10-115 through 10-117.1, 10-17.9:1 through 10-17.30, 10-1 through 10-17, 10-177 through 10-186, 28.1-1 through 28.1-36, 29-1 through 23.1, 32-9.1, 45.1-212 and 62.1-44.2 through 62.1-44.44, as severally amended of the Code of Virginia are repealed.

3. If any section, subsection, sentence, part or application of this act be held unconstitutional by a court of last resort such holding shall not affect any other section, sentence, part or application which can be given effect without the part so held invalid.

4. There is hereby appropriated from the General Fund of the State treasury the sums heretofore appropriated to the following: The Air Pollution Control Board, the State Water Control Board, Department of Conservation and Economic Development, the Marine Resources Commission, the Commission of Game and Inland Fisheries, the Governor's Council on the Environment, and such funds appropriated to the Department of Health for its solid wastes disposal program and also an additional fifty thousand dollars to carry out the purposes of this act.

5. This act shall be in force on and after July one, nineteen hundred seventy-four, and shall expire at midnight on July one, nineteen hundred seventy-four, unless it shall be reenacted by the General Assembly prior to that date.

.....
President of the Senate

.....
Speaker of the House of Delegates

Approved:

.....
Governor

