

**REPORT OF THE
STATE WATER STUDY COMMISSION
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
RICHMOND
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**Report of the
State Water Study Commission
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1981**

To: Honorable John N. Dalton, Governor of Virginia
and
The General Assembly of Virginia

I. Statement of the Chairman

The most important and far-reaching problem facing Virginia in the next ten years will be that of assuring an adequate supply of water for all Virginians. Our approach to this problem and our decisions concerning the solutions to this multifarious dilemma will have a significant effect on Virginia's future. Virginia has more than sufficient water resources to meet the needs of the Commonwealth. The question facing Virginia is how those resources can best be utilized to meet the needs of all areas of the State.

For the last four years the State Water Study Commission has been determining the extent of the water supply problem and seeking solutions to avoid a state water supply crisis. Much progress has been made, and legislation proposed by the Commission has been enacted into law, helping to alleviate specific water supply problems.

In the last six months, following the receipt of two major studies, the Commission has worked diligently to draft three legislative proposals. Proposal A calls for increased water usage data collection and the development of a state water plan. Proposal A is being strongly recommended for passage by the 1981 session of the General Assembly. The two other proposals, B and C, seek long-term solutions to Virginia's water problems. Proposal B seeks modification of the riparian doctrine, including interbasin transfer of water; Proposal C is a comprehensive water code for Virginia.

The draft alternative proposals B and C, included as part of this report, are not intended as finished products. They are working drafts of two major approaches to meeting Virginia's water allocation needs. Within each of these conceptual approaches are many possible alternatives for implementation.

Due to the complexity of Virginia's water allocation needs and the short time frame available to properly draw legislation designed to meet those needs, it was felt by a majority of the Commission that further deliberations and public input will be required by the Commission before it can submit or recommend long-range solutions to Virginia's water needs.

Since the task of the Commission is very near completion, since the Commission has acquired such a wealth of information and depth of understanding, and since its membership includes experts with such a wide range of water-related knowledge, it would be a tragic waste of time and money already expended not to extend the Commission for a year in order that the Commission might complete its original charge. I, therefore, am in total support of the Commission's recommendation that it be extended one year and that it submit its final recommendations to the 1982 Session of the General Assembly.

This report, along with the appendices, presents the work of the Commission during 1980.

Respectfully submitted,

James H. Dillard, II

II. Introduction

In 1977 the General Assembly adopted House Joint Resolution No. 238, which called for a study of the water supply and allocation problems of Northern Virginia and southeastern Virginia. The resolution asked that the study include an identification of the nature and extent of such problems, together with suggestions for their alleviation. Dividing its work among three subcommittees, the Commission made some progress, holding six public meetings or hearings.

An early conclusion of this study was that the existing common law doctrine of riparian rights is an obstacle to several attractive and viable alternatives for solving the water supply and allocation problems in both geographic areas. An analysis of legal problems was prepared for the Commission by the Young Lawyers Section of the Virginia Bar Association, but time did not allow the development of a recommended solution to these problems. Recommendations were made concerning the most promising alternatives available in Northern Virginia.

The Commission additionally proposed legislation to (1) enable local governments to require the use of water saving devices and (2) establish a water withdrawal permit system in the Potomac River Basin. The first of these proposals was enacted into law. Rather than adopt the second one as proposed, the General Assembly chose to reaffirm the Commonwealth's riparian rights to the Potomac.

An additional recommendation sought the expansion of the Commission to reflect its statewide constituency, as well as its extension for at least one year. This was accomplished by the adoption of Senate Joint Resolution No. 1 in the 1978 General Assembly. An appropriation of \$325,000 was made to support the work of the Commission through a two year extension.

In 1978 and 1979 the Commission contracted for (1) a study of available groundwater in southeastern Virginia, (2) a study of the legal and economic implications of changing Virginia's water allocation institutions, and (3) the development of alternative provisions for a comprehensive new water code incorporating groundwater, surface water management, and water quality control. In addition, the Commission addressed the particular water problems of middle Virginia by sharing in the purchase of a completed water supply study undertaken for the Rappahannock Service Authority area.

The groundwater study was completed, indicating a large volume of potential groundwater supply in southeastern Virginia, and was reported to the public. Preliminary results of the other two studies were presented in the Commission's December 1979 report; the studies, however, were incomplete, leading to the recommendation for a continuation of the Commission.

The Commission further recommended the creation of a metropolitan Washington water supply task force to develop and implement a regional water supply solution based on data from the most recent Corps of Engineers study. It was suggested that, if the regional approach was not productive, the Commonwealth should be prepared to take legal action to protect the rights of Virginians to the use of Potomac water.

Senate Joint Resolution No. 36 (the text of which is contained in the Appendices to this report), adopted by the 1980 General Assembly, authorized the State Water Study Commission to continue the study of water supply and allocation problems which it had begun several years earlier. The Commission was again directed to report to the Governor and General Assembly and recommend any measures necessary to guarantee to all Virginia citizens an adequate and dependable water supply.

Membership of the Commission

Senators Charles J. Colgan and Wiley F. Mitchell, Jr., and Delegates Gerald L. Baliles, J. Paul Councill, Jr., James H. Dillard, II, Glenn B. McClannan, and Lewis W. Parker, Jr., continued as legislative members of the Commission. Citizens who continued their membership on the Commission were Louis L. Gay, Jr., Robert R. Peters, J. Lewis Rawls, Jr., and George W. Williams. Senator William T. Parker was named to the Commission during 1980. George M. Cornell continued as an ex-officio member of the Commission.

At its first meeting, Mr. Dillard was elected Chairman, and Mr. Rawls, Vice-Chairman.

III. Water Problems During 1980

(The following is adapted from the December, 1980, "Virginia Section Newsletter," published by the Virginia Section of the American Water Works Association.)

For the second time in four years, Virginia suffered through a prolonged dry spell which posed a serious threat to water supplies throughout the state. As in 1977, water suppliers throughout the state faced shrinking reservoir volumes and various forms of restrictions on water use by consumers.

The situation in the Tidewater area remains serious. The area has received less than half its normal rainfall since June, and the Norfolk area reservoirs had only 4.5-billion gallons of water available in the second week of November.

On August 13th, mandatory restrictions were put into effect for over 690,000 residents of Norfolk, Virginia Beach and Chesapeake. However, Norfolk's water supply continued to dwindle and officials enacted a water allocation plan on October 1. This is the first time such action has ever been taken. Under this plan, customers are limited to seventy-five percent of their average consumption during the preceding calendar year, except that those who averaged less than 6,000 gallons a quarter are not subject to rationing. In order to help ensure compliance with this program, those customers who exceed their allocation will be fined.

As of mid-November, consumption had decreased to the neighborhood of 45 million gallons a day, which extended the area's remaining water supply to 100 days. To augment the existing supply, Norfolk and Portsmouth are buying from Suffolk. Norfolk officials are also hopeful that they will be able to supplement their supply with flows from the Nottoway and Black Water Rivers up to as much as 40 million gallons a day. The extent to which Norfolk can draw on these sources depends on a sufficient amount of rainfall in the near future to maintain flows at an adequate level.

Virginia Beach, which buys all of its water from Norfolk, hopes to establish supplemental sources from freshwater wells and an 11 million dollar desalination plant.

No other jurisdictions in Virginia are imposing rationing, but mandatory conservation was in effect in Portsmouth, Bedford County and Williamsburg, where conservation measures have been extended until February 1. Voluntary conservation is or has been in effect in Strasburg, Newport News, and the Northern Virginia areas supplied by the Fairfax County Water Authority.

In addition to voluntary conservation, the Fairfax County Water Authority bought raw water from the City of Manassas reservoir some thirty miles upstream on Broad Run, a tributary of Fairfax County's Occoquan Reservoir. Both the purchase and voluntary conservation began on October 8, affecting some 675,000 customers in Fairfax County, the City of Alexandria and eastern Prince William County. In mid-November the Occoquan reservoir held only slightly more than 30 percent of its capacity, approximately a 45 day supply at the current withdrawal rate. Additional treated water was purchased from Falls Church to supplement the Occoquan supply.

The long-range outlook for the Tidewater area took a turn for the worse when the U.S. Army Corps of Engineers announced in September that the plan to withdraw water from Lake Gaston on the Virginia-North Carolina border will be delayed indefinitely. The 278 million dollar plan calls for construction of a facility capable of drawing about 80 million gallons a day and a pipeline to transport it 100 miles to the Tidewater area.

In Northern Virginia, construction is proceeding on the Fairfax County Authority's Potomac River Water Supply Project which, when completed in late 1981, will produce up to 50 million gallons a day from the Potomac River and lessen the burden on the Occoquan Reservoir supply.

The legal issues under study by the Commission gained statewide attention when the southeastern Virginia drought precipitated a conflict between the cities of Norfolk and Suffolk over water rights. Newspapers quoted both the Governor and the Attorney General as to the need for a court decision to resolve the complex issues. After the U.S. Navy became involved, a suit was filed in federal court. The current crisis is likely to be over, however, before the court has reached a

decision.

In Northern Virginia, a metropolitan water supply task force was established, as recommended by the Commission. In November a regional water supply solution appeared imminent as both the task force's technical and citizen advisory committees submitted unanimous recommendations to the ~~multi-jurisdictional~~ task force. By year's end, however, the task force had not been able to reach agreement, leading to fears that this missed opportunity would result in interstate lawsuits over Potomac water rights.

IV. Commission Activities During 1979

In June and July the Commission received the results of the studies contracted for during 1979.

Report of William E. Cox et al.

The first of these reports is entitled "Special Report to the Virginia State Water Study Commission on Water Supply Management in the Commonwealth of Virginia." It was undertaken by a group of VPI & SU faculty members from the Departments of Agricultural Economics and Civil Engineering. Members of this group included William E. Cox, Leonard A. Shabman, Sandra S. Batie, J. W. Looney, Richard A. March, and Denise Daniels. Funding for this study was provided jointly by the Commission and the Virginia Environmental Endowment. The purpose of the project was to identify the constitutional, legal, economic, environmental, and other practical problems which could be anticipated in the future based on various management alternatives. The Commission received a summary report, which is to be followed by a completely documented report. The complete report is expected in early 1981.

This report seeks to:

- Analyze the existing institutional framework for water allocation in Virginia;
- Evaluate the riparian doctrine in relation to general criteria for an allocation system;
- Assess the adequacy of existing water supplies for present and future demands;
- Evaluate alternative water allocation institutions which might be better than present ones;
- Recommend possible solutions to the problems which exist.

Changing the riparian doctrine, the authors argue, can be done in one of two ways: by modifying it selectively, or by replacing it with an administrative permit system for water allocation.

Should the riparian doctrine be retained, the Cox report suggests the following legislative modifications:

- Transfer of water to non-riparian lands should be authorized, subject to the protection of environmental and other interests of the area of origin;
- Studies should be undertaken to determine the level at which stream and river flows are adequate to protect fish, wildlife, and recreational use; once the studies are complete, the mechanisms necessary to protect these resources should be implemented;
- Water allocation, water quality control, and other water management programs should be integrated.

Should an administrative permit program be adopted, Cox et al. make these additional recommendations:

- Due to differences in supply problems around the Commonwealth, consideration could be given to a district approach for the development of permit systems for specific regions;
- Managerial authority for a permit system should be placed at the state level of government;

-A new permit system should encompass, but not be modeled on, the existing groundwater allocation program;

-A permit system should be overseen by a full-time professional board, rather than a part-time citizen board.

Certain measures are recommended as a means of strengthening the Commonwealth's management of its water resources, whether or not the riparian doctrine is altered. The state should:

-Define more precisely in-stream flow standards for particular basins;

-Assess the potential for interbasin transfers and storage within each basin;

-Develop a local planning assistance program;

-Give consideration to direct state financial participation in the development of water supplies.

In conclusion, this report describes three directions in which to proceed: retention of the riparian doctrine, modification of the riparian doctrine, or replacement of the riparian doctrine with an administrative permit system.

Report of William R. Walker

William R. Walker, Director of the Virginia Water Resources Research Center, was responsible for the Commission's other study. The contract negotiated with him called for a comprehensive water code for Virginia with alternative provisions and a commentary. Walker was asked to take into account, when developing this code, the interrelationship of all types of water; furthermore, he was asked to include mechanisms for dealing with both water quantity and quality. Finally, Walker was asked to develop in his code an allocation system which would promote the efficient use of water as well as equity among users.

The Walker Report, entitled "A Water Code for Virginia," suggests specifically how the Commission might proceed should it decide to replace the riparian doctrine with an administrative permit system. This draft code is divided into four sections. The first deals with the general administrative structure and operations of a water permit system. The regulation of permitted uses is the subject of the second section. The third section applies to the construction, operation, and regulation of water wells. The final section, most of which is copied or adapted from the present State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia), is concerned with the protection of water quality.

Commission Consideration of the Reports

The "Cox Report" confirmed what the Commission's deliberations and earlier public hearings had indicated were the major water problems facing Virginia. The problems can be stated as needs for:

- (1) The development of complete and accurate data on water use and water availability;
- (2) The removal of existing and potential legal obstacles to the use of water away from the source stream;
- (3) The coordination of groundwater and surface water laws and policies;
- (4) The coordination of measures to ensure water supply with those which ensure water quality;
- (5) The revision of the Groundwater Act to ensure its effectiveness as a management tool;
- (6) The protection of the few geologic sites that are logical locations for future reservoirs; and
- (7) The creation of a funding mechanism to generate the resources necessary to meet water resources planning and management needs.

In its July deliberations the Commission identified the first problem (lack of adequate data and a state water plan) as essentially non-controversial and fundamental to any solution. Accordingly it was decided to draft a legislative proposal to accomplish this limited goal. This was identified as Alternative A.

The second problem (interbasin transfer) is probably the most controversial issue and raises political, social, economic, and environmental questions of broad importance throughout the Commonwealth. The Cox report suggests two approaches to this problem: (1) an administrative permitting procedure (such as the one incorporated in Dr. Walker's proposed Water Code), and (2) legislation to alter existing riparian doctrine, but retain the courts as the primary body for resolving conflicts. The first option was before the Commission in the Walker report. Accordingly, the Commission decided to have a legislative proposal drafted to implement the second option, i.e., the retention of the riparian doctrine, but the selective modification of it to make it workable under current conditions to meet present needs. This was identified as Alternative B.

The comprehensive Water Code presented in the Walker report attempts to provide solutions for all seven problem areas. It includes all elements of Alternative A. It also includes an administrative permit option, which is significantly different from Alternative B. Since the 400 page report presented numerous variations in almost every section, as the Commission had requested, a subcommittee was appointed to screen the report and develop a single proposal based on tentative selections among the alternative provisions. The resulting draft Water Code was identified as Alternative C.

Meeting twice in September, the Commission revised and then approved drafts of Alternatives A and B. The subcommittee's draft Water Code was discussed, but time did not permit adequate consideration to develop a second draft of it based on review by the full Commission.

V. Commission Alternatives A, B, and C

The texts of these proposals can be found in the Appendices to this report. It is important to note that Alternatives B and C are only preliminary drafts, but were presented to the public in this form.

Alternative A

Alternative A seeks to increase state data gathering and processing activities. Under it, the Water Control Board would be directed to significantly increase the amount of water-use data it collects through the registration of water users. It would also be called upon to devise and define in-stream flow standards for the surface waters of the state. The development of a planning assistance program, in which the state would help localities with demand management strategies, permitting procedures for projects, and like matters, is also mandated under this proposal. Finally, this measure directs the Water Control Board to prepare a state water plan, the implementation of which may or may not involve interbasin transfers. The total cost of this added workload for the Water Control Board is estimated to exceed one million dollars per year for the next eight years.

Alternative B

Alternative B would modify the riparian doctrine by the adoption of harmless use legislation and the clarification of what constitutes a lawful diversion of water. This measure provides that any beneficial use of water - whether or not a riparian use - is lawful unless it causes "harm." "Harm" occurs when such a use interferes with valid existing uses, or when it decreases the market value of riparian land.

Under this proposal, any interbasin transfer in excess of 100,000 gallons of water per day would require the approval of the Water Control Board. Once the Board has approved or rejected any application for such a transfer, its decision could be appealed before a special court. The court would be composed of three circuit court judges appointed for the appeal by the Chief Justice of the Virginia Supreme Court. All such appeals would be heard de novo.

Finally, Alternative B notes the importance of centralized public water supplies to the citizens of the Commonwealth. Accordingly, it modifies the riparian doctrine by recognizing that withdrawal of

water for this purpose is a valid riparian use of streams and rivers.

Alternative C

The philosophical foundation for the Subcommittee's draft Water Code is the belief that water resources belong to all citizens and the maximum beneficial use of water is a public trust to be administered by the state. The new statutes recommended by the Subcommittee seek to ensure this.

The Subcommittee made a number of significant decisions. Among them are the following:

- The Subcommittee chose to base the legislation on a public trust doctrine.
- The Virginia tradition of a part-time citizens' board is adhered to for the new State Water Resources Board (which would replace the State Water Control Board).
- Although authority over water resources is placed at the state level, the State Board is empowered to create local advisory boards to help it in its work.
- The State Board has the discretion to set priorities among users of water.
- User fees, rather than general revenue taxes, are designated as the funding mechanism for the State Board. Such fees include permit application fees as well as annual user surveillance fees. A fund established from these fees could be used to provide compensation to "damaged" parties and to purchase and protect prospective reservoir sites as determined by the State Board.
- Procedures are included to authorize interbasin transfers of water as part of the permitting process.
- Except for those who withdraw less than 5,000 gallons per day, water users must obtain permits from the State Board. Initially, all existing users would be issued permits automatically upon application.
- The maximum amount of time for which the State Board can issue a permit, except for a public water utility, is ten years. Public water utilities can receive permits lasting up to fifty years. Were this exception not included, these utilities might find it difficult to sell the bonds used to finance capital improvements.
- The section of Alternative C which regulates the construction and operation of water wells is meant as a replacement for the Groundwater Act; the consensus of the Subcommittee was that the Groundwater Act is deficient and needs to be replaced rather than repaired. The licensing of well drillers was supported by the Subcommittee with the suggestion that separate legislation, giving these licensing responsibilities to the Department of Commerce, be drafted.
- In regard to the protection of water quality, the Subcommittee did not see the need for any substantial departure from current policy and law. Accordingly, the existing water pollution control provisions were gathered and grouped into one chapter of the new code.

VI. PUBLIC HEARINGS

Following the Commission's development of Alternatives A, B, and C, copies of them were sent to interested parties throughout the State. Hearings were scheduled several weeks later to provide an opportunity for public comment on the Alternatives. These hearings were held in Fairfax, Norfolk, Roanoke, and Richmond during October and November.

Approximately sixty people were heard at the four public hearings, most representing governmental bodies, public agencies, and other organizations. A frequent comment concerned the inadequate time afforded to review the Commission's alternatives, particularly Alternative C, which is thirty-three pages long in small type. The different aims of the several alternatives, from limited to comprehensive, led to confusion, as did the absence of explanatory material. Several speakers interpreted the proposed Water Resources Board in Alternative C as a new state agency, existing alongside the Water Control Board and duplicating its function.

A number of speakers addressed the need for change and the inadequacy of existing systems to cope with water conflict, but were unwilling to endorse the approaches in Alternatives B and C until they had more time to study and understand them. Many called for an extension of the Commission for another year, and several requested workshops to explain and discuss the Commission's Alternatives prior to taking revised drafts of them to public hearings later in the year.

A concern about any unnecessary expansion of state government was expressed by a number of speakers. There was also substantial opposition to interbasin transfer and to any modification of the riparian doctrine at two of the four meetings. Nevertheless, a large number of speakers supported the enactment of Alternative A as necessary in any event.

The comments received addressing the three specific alternatives are summarized as follows:

Alternative A. Advantages: This is the easiest of the proposals to implement. It does not alter riparian water law, which is relatively inexpensive and easy to administer. It requires the gathering of data which will probably be needed before any significant modification or replacement of riparian law can be implemented (should such modification be sought). Finally, some believe that it may, in and of itself, offer a solution to the water resource problems of the Commonwealth.

Disadvantages: Some members of the Commission argue that this measure in no way alleviates the lack of water resources found in certain areas of Virginia. It offers no means of getting water from the areas of surplus to the areas of great need within the state. Finally, it in no way helps solve the problems which exist in the Groundwater Act and other piecemeal legislative approaches implemented by the state in the past. Adoption of this alternative as a solution to Virginia's water management problems assumes amazingly harmonious relations among localities dealing with a precious resource.

Alternative B. Advantages: The major advantage of this approach is that it offers a solution (interbasin transfer) to a problem (the scarcity of water in some areas) with only a minimal modification of the law. A second advantage is the certainty of public access to water through riparian rights for municipalities. The riparian doctrine is not abandoned; instead, it is amended.

Disadvantages: Some opponents of this proposal argue that it is patently unfair to remove water from areas of abundance without the prior consent of these areas. Also, while compensation is suggested, no specific formula for it has been provided. Still other critics of this proposal assert that it is only a partial solution; full state management of water resources is needed. In particular, the proposal ignores the cause of a major crisis now facing the Commonwealth: the Alternative is silent on the revision of groundwater law and fails to take note of the interrelatedness of ground and surface water.

Alternative C. Advantages: This permitting system is the only proposal which offers a comprehensive integrated program for state management of all water resources. It is also, its proponents insist, the sole Alternative which will adequately address the future problems and needs of the state. This Alternative would take advantage of an existing water management institution to substitute a coordinated program of resource allocation for the present piecemeal approach. Further, it is argued that if this proposal were to be adopted in the near future, it could be implemented with little harm to present users. Proponents see this comprehensive water management system as providing an opportunity for action now with a minimum of disruption, versus action later as a response to critical disruption.

Disadvantages: Such a system, its opponents say, is far more extensive than what will be needed for the foreseeable future. The added cost and bureaucracy required by a permit program, they continue, cannot be justified. They also suggest that if any type of permit system is needed, it should not be instituted statewide; rather, it should be confined to the specific portions of the Commonwealth in which it is needed. Finally, opponents argue, there is no need to legislate such a major change until we get the data which is to be provided under Alternative A. Then, if the data shows the need for it, an administrative permit system can be developed.

VII. Conclusions and Recommendations

As was reported by the Commission last year in the statement of the Chairman:

Virginia is blessed with a plentiful supply of water even though it is not always in the right place at the right time. Because of the plentiful supply of water the State's Water Policy and Water Laws have evolved as if water had no limit as to its availability. The Commission sees that, as demands increase, and in some areas exceed local sources of water, it becomes necessary to seek ways to ensure that water is available to all Virginians for use in sustaining and satisfying the needs and wants of our people for goods, services and a healthful and pleasing environment.

As a result of the response to our investigations and inquiries, the Commission, in looking to the future, is faced with the reality that conditions have changed since the evolution of our present water policies and water laws. The Commission is compelled to conclude that these changed conditions call for amendment of the present laws and water policies of the Commonwealth. This conclusion provided impetus to the Commission to embark upon a course of action which will lead to the development of a comprehensive water policy and recodification of water laws which will provide a mechanism for dealing with water quantity and quality in a manner such that efficient use and equity among all users will be promoted.

Within six months in 1980, the Commission received the results of two major studies, drafted three legislative proposals in preliminary form, distributed widely the three Alternatives, and conducted four hearings for response from the public. Given such short notice and the complexity of the subject, the breadth and depth of testimony was impressive, demonstrating wide interest and concern. Drought problems in Tidewater of a severity which attracted press coverage outside the Old Dominion highlighted the importance of water law issues and the urgent need for a better solution.

The Commission is forced to concede that its work is incomplete. Although much has been learned about the problems and, based on the completed studies, the alternative approaches to solving them have been narrowed down, further consideration and additional input is necessary to refine the Commission's draft proposals and select the optimum course for future management of Virginia's water resources. Although it is evident that change is demanded, the ramifications of a wrong choice are bound to be far reaching and could be devastating.

It appears that the continued development of Alternatives B and C, including the scheduling of workshops on them in early 1981 and another round of public hearings on refined proposals in the fall of 1981, would lead to the most sound and acceptable proposals for consideration by the General Assembly and the Governor in 1982. There is, however, no need to delay enactment of Alternative A and the initiation of data collection and planning.

The specific recommendations of the Commission are as follows:

A. The Commission recommends that the State Water Study Commission be continued for an additional year to conduct public workshops on water law issues and its proposals, to hold additional public hearings, and to develop draft legislation for presentation to the Governor and the General Assembly.

B. The Commission recommends that Alternative A (see Appendix A) be enacted to amend and reenact § 62.1-44.38 of the Code of Virginia, relating to the formulation of plans and programs by the State Water Control Board.

C. The Commission recommends that the Commonwealth and its local governing bodies continue to explore cooperative solutions to interstate water problems involving Virginia and North Carolina, the District of Columbia, or Maryland. If, however, the cooperative approach is unsuccessful, the Commonwealth should be prepared to take legal action to protect the water rights of Virginians.

Respectfully submitted,

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William T. Parker
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George W. Williams
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- * Dissenting opinion
- ** Concurring opinion

Dissent to the State Water Study Commission Report

By Gerald L. Baillies

As a member of this Commission I have signed this report, but I do so without endorsing or subscribing to all of its conclusions and recommendations.

When this body a year ago filed its interim report, the document identified many of the problems involved with the use and allocation of the water resources of the Commonwealth. The reader should not conclude, however, that this report addresses the political and economic problems associated with the water supply and allocation problems in Virginia. In my judgment, some of the proposals under consideration by this Commission convince me that it is no closer today than it was last year to proposing an approach that addresses and solves the water supply problems of the Commonwealth.

The time may have arrived when the problems and proposals considered by the Commission should be transferred to the General Assembly - the House Conservation and Natural Resources Committee and the Senate Agriculture, Conservation and Natural Resources Committee - for the legislative consideration and action required for a matter of such critical importance to the citizens of Virginia.

This Commission has not addressed adequately the complexities of the legal questions posed by the water supply problems in Virginia and this report is almost totally silent about the legal questions facing anyone who wishes to change the legal and institutional framework regarding water rights in the Commonwealth. It is a major deficiency of the report.

The law of water is a part of our heritage; it is embodied in our legal system, encased in language rich with property descriptions and distinctions. It has served us reasonably well, but questions have been raised about its viability for our future.

Although much of Virginia in 1981 has experienced drought conditions, generally speaking, Virginia is rich in water resources. The problem is that the geography of the Commonwealth is such that a growing number of our urban areas are facing real and projected shortages for consumptive purposes and cannot reach out physically or legally for our water.

The issues are statewide in dimension, for any effort to resolve a local or regional water supply and allocation problem involves the alteration of the statewide body of law, which in itself is not always clearly defined or comprehended.

The issues involve constitutional, legal and political matters; they also raise economic, environmental and definitional concerns. How can those questions really be avoided when one locality or area in Virginia, urban, vibrant, growing, proposes to take water from a rural area of fewer people, but which has plans and hopes for growth that contemplate use of that rural water? The report is silent on those questions.

Common law prohibits interbasin transfers of water, and until that is changed by statute to the contrary, water-starved areas cannot import water from more distant regions of the state. To change the law to permit interbasin transfers, however, requires the definition of basin. How big is a basin? There are legal arguments that transfer of water from one watershed to another is included within the definition of a basin and thereby prohibited by common law.

There are other questions: If interbasin transfers of water are permitted, how are they to be administered? What institutional relationships are required? Interbasin transfers also raise the question of economics: Who pays for the water and to whom is payment made? In fact, a more fundamental question must be asked: Who owns the water in Virginia? These questions are not explored in the report.

In the Commonwealth the owner of land adjacent to a water course enjoys a number of riparian rights, among them being the right of access to the water, the right to make reasonable use of the water as it flows past or leaves the land. Riparian rights can vary over time and according to usage and also, whether the waterway is a private or public water course, which often turns on the question of navigability. If interbasin transfers are authorized by statute, what happens to the

riparian owner's right to use that water?

Riparian rights on both public and private water courses constitute a legally recognized interest under Virginia law. The Virginia Supreme Court, although in dicta rather than a holding, has referred to riparian rights as "property." Furthermore, the Court has indicated that riparian rights surpass a mere license or easement in the use of the flowing water. The Court has also held that riparian rights are severable from the land to which the rights are appurtenant and that the severed riparian rights are then alienable as a separate interest. So, whether riparian rights are "property" or "an interest in property," in either case, in Virginia they have a legally recognized status. If that is the case, how can such rights be impaired under a statutory water resources program?

It might be argued by some that an expansive reading of Article XI of the Virginia Constitution, the Virginia Environmental Quality Act, and the State Water Control Law would authorize regulation of water resources and, therefore, diversion of water resources without compensation for all purposes would be beneficial to the public in order to meet the changing wants and needs of the people and that the public interest would require the proper development and wise use of such resources. It also might be argued by those people that the General Assembly could enact such interbasin transfer legislation without any great concern over impairment of riparian rights. I disagree.

Despite the sweeping language in the Virginia Constitution and in the Virginia Code, there are countervailing considerations if water resources legislation were to impair or damage private riparian rights. Given the long standing recognition of riparian rights under Virginia case law, the power to take or damage such rights without compensation is indeed questionable, since the Bill of Rights in the Virginia Constitution prohibits the taking or damaging of private property without just compensation to the owner of the property. Indeed the Virginia Supreme Court over the years has ruled unlawful the efforts of local governments to divert water without compensation to riparian owners under eminent domain proceedings.

Thus, any statutory effort undertaken to provide for interbasin transfers must consider the impairment and compensation problems. The report does not do that. Such considerations must go beyond the losses incurred by the riparian landowner. What about the local government's interest in the loss of water? Should not its impaired ability to grow be compensated by the taking jurisdiction? But, then, does it really have a property right or interest in the water that is diverted? In either case, what is the measure of damages? Can it depend upon the prospective duration of the injury? These are hard questions that go to the heart of our political and legal system and cannot be ignored by the Commission, yet the report contains three alternative proposals, none of which addresses these questions of legal importance.

Assume, however, that these questions can be answered satisfactorily. What about the delivery problems? Long distance transport of water by pipeline involves compliance with many local government ordinances, state and federal requirements, consents and approvals, all of which can consume light years of effort and expense. The logistical problems would be staggering.

While much of the Commission's early efforts were devoted to identifying and analyzing the water supply and allocation problems in Virginia, regrettably a great deal less time has been devoted to the magnitude and complexity of the legal problems raised by Alternatives A, B, and C included as a part of this report.

None of the proposals, in my judgment, is responsive to the water starved areas of Virginia. Indeed, adopting the proposals may create delay, engender additional legal confusion and cause severe financial problems for state and local governments for years to come.

It is worthwhile to look briefly at the three proposals:

Alternative A requires the Water Control Board to develop a comprehensive water supply plan for the state by 1989. In developing the state plan, the Board is required to determine the amounts of water withdrawn and used in Virginia and determine the minimum flows of water necessary to maintain aquatic life and avoid permanent damage to those rivers and streams. Alternative A also authorizes the Water Control Board to require large users of water to register such uses with the Board and, finally, Alternative A provides authority to the Water Control Board to provide assistance to local governments regarding water supply planning activities.

Legislation incorporating Alternative A has been introduced and I support that proposal, but it should be noted that Alternative A will not answer the legal questions contained in this statement nor will it produce answers for the communities of Virginia that either are water starved or water rich. The conflict, therefore, goes on.

Alternative A, however, is a reasonable approach, a first step in providing the building blocks, the foundation upon which a legal framework can be constructed, but it should not be hailed as a solution to the water problems of the Commonwealth.

Alternative B has been considered by the Commission and taken to the public for a series of public hearings. The stated intent of Alternative B is to require the maximum utilization of state waters. Section 62.1-11.1 would require that available water supplies be applied to optimum beneficial use consistent with social, economic, and environmental well-being. What does that mean? One clue is found in § 62.1-11.2, entitled "Harmless Use": "Any beneficial use of state waters is lawful...unless such use causes harm to such person" (Emphasis supplied). What does it mean? To what extent does it differ from the common law riparian doctrine? It is clear that the harmless use doctrine is a significant departure from present law, for it says that any beneficial use is lawful; use is not restricted to riparian owners. So what does Alternative B mean? If it means something new in the law, how can one tell what it means? For example, what is a beneficial use? Where is it defined? Who will define it - and how - if it is not in the statute? Similarly, what is harm? Who will define it or measure it? There are no standards in Alternative B by which these decisions would be made. I question whether the proposal would stand up in court.

Alternative B also permits interbasin transfers, thereby repealing the common law doctrine of Virginia, but Alternative B does not contain a definition of basin. There are no standards set forth for measurement and damages to riparian owners, yet clearly riparian rights are property rights under Virginia law. Nothing is said in Alternative B about compensation. Nothing is provided for the delivery problems associated with interbasin transfers.

There is one good feature, however, about Alternative B. The law presently does not recognize a municipality as a riparian owner, even if it owns land adjacent to a river. That should be changed and Alternative B makes that change.

Alternative C may be well intentioned, but it is not well conceived, for it fails to achieve the purpose of the Commission's concern - certainty in the area of water use law.

The common law doctrine has been criticized because it is subject to changing events and uses. If the objective, then, is to change the common law doctrine in order to achieve certainty in the law, it is fair to examine Alternative C by the standard of certainty. It fails.

Alternative C is vague. It is replete with generalities; it contains confusing and untested legal terminology. In my judgment, Alternative C would create more litigation and delays than the present law.

Alternative C proposes to abandon the present system of law for a new administrative permit system. Water supply, therefore, would be a matter for an administrative agency's decisions. The Commission has studied the permanent systems adopted in Kentucky, Mississippi, Iowa and Florida. In Florida, for example, the new permit system required thousands of new employees and millions of new dollars to administer the program and, yet, it was uncontroverted that the water law of Florida is still fragmented and uncertain. Similar conclusions were drawn from studies of other states.

Perhaps one of the features of Alternative C that requires careful consideration is § 62.2 - 5 which provides: "No state or local government agency may enforce any ordinance, rule, or regulation that affects the use of water resources controlled under the provisions of this title, whether promulgated before or after the effective date hereof, unless the Board has approved such ordinance, rule, or regulation." I am not convinced that the General Assembly of Virginia is prepared to turn that kind of authority over to an administrative agency in Richmond.

A related concern involves the cost of administrative and enforcement of Alternative C. Our present riparian doctrine is interpreted and enforced by the Virginia court system, but Alternative C would require considerable sums of money, considering the findings of the Commission in regard to

administrative permit systems established in other states. A more important concern, however, is the almost deafening silence in the report of the interrelationship between federal and state regulation of waters. The United States Army Corps of Engineers, Environmental Protection Agency, the Department of the Interior, to name a few, play significant roles in water quantity and quality problems. Legislative proposals developed for state use cannot ignore the probable impact and delays associated with federal interests.

Virginia has nine major river basins, 120 miles of Atlantic coastline, nearly 2 million acres of salt water in the Chesapeake Bay, two natural lakes, six major reservoirs and numerous streams and small ponds that, when added together, equal about 1/2 million acres of inland fresh water. Although we have vast water supplies, we often need them in different locations at different times. This is a problem that state and local governments will have to meet in the future. With the cooperation and support of the private sector, I am hopeful that we will ultimately find reasonable solutions to these problems. Progress, however, is often painfully slow.

For the reasons stated, I do not believe that any of the proposals advanced in this report can adequately address the legal, financial and institutional problems mentioned above, problems which have not even begun to incorporate the growing interest in, and thrust of, the federal government in this area. Questions of federal preemption and compensation, interstate rivalries and concerns are matters that must be considered by the General Assembly.

What we face, then, is a conflict between our heritage and our future. While we cannot avoid the legal, social, economic and environmental consequences of the water supply and allocation problems facing the state, we must avoid proposals that prolong the regional and local frictions inherent in such problems.

This is the challenge to our legal and political systems. That is the task that faces us in the future. Sadly, the report does not meet that challenge.

We concur in the foregoing dissent to this report.

**J. Paul Council, Jr.
Lewis W. Parker, Jr.**

Dissent to the State Water Study Commission Report

By Lewis W. Parker, Jr.

While there are certain aspects of the report of the Water Study Commission with which I concur, I cannot agree with the total concept or philosophy it projects. I do concur more fully with the dissent of Mr. Baller. I recommend legislative oversight by a joint subcommittee of the information and material that has been prepared. I also recommend that such a subcommittee prepare proper legislation which directly addresses the problems that are not resolved by this study.

**Concurrence and Comment on Report of Virginia
Water Study Commission**

By Glenn B. McClannan

I concur with the decision of the majority in recommending the adoption of alternative "A". However, I would respectfully submit that Virginia must proceed immediately to adopt a statewide law concerning water that will best protect the health and welfare of all the citizens of the Commonwealth and promote business and industrial health and expansion, with the much needed jobs for our citizens that are essential.

Virginia is blessed by being a "water rich" state. The rights of all our citizens must be properly protected, both present and future, from an unfair water distribution system. Immediate action is essential to prevent harsh adverse results to many of our citizens, industries and businesses.

APPENDIX A

Alternative A

A BILL to amend and reenact § 62.1-44.38 of the Code of Virginia, requiring the development of water resources plans and programs by the State Water Control Board.

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.38 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.38. Plans and programs; advisory committee; cooperation with federal, state, and local agencies.— ~~(e)~~ A. The Board shall ~~devise~~ *prepare* plans and programs for the development *management* 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 and programs shall be prepared for each major river basin of this state, and appropriate subbasins therein, 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 Glack river basin, the Tennessee-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. Reports for each basin shall be published by the Board.~~

B. Reports on water management plans and programs for Tidewater Virginia south of the James River and for the Potomac-Shenandoah River Basin shall be prepared before December thirty-one, nineteen hundred eighty-three. Interim progress reports on these first two plans shall be prepared and made available no later than December thirty-one, nineteen hundred eighty-two, and shall include (i) printed summaries of items (i) through (v) of paragraph C of this section; (ii) those alternative actions, which if implemented would solve a water supply crisis in the heretofore mentioned areas; and (iii) such other tentative conclusions and recommendations as may be appropriate. Reports on water management plans and programs for all other basins and areas, and on the consolidated statewide plan, shall be prepared by July one, nineteen hundred eighty-nine. Such plans shall be revised, as is necessary to reflect changing conditions, no less than every five years thereafter.

C. In preparing river basin plan and program reports enumerated in subsection A of this section, the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic water use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) identify water management problems and alternative water management plans to address such problems; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

D. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of waste water discharge, provided that the daily average during any single month exceeds five thousand gallons per day. Provided, however, the Board shall not, by regulation, require registration by users of water for crop irrigation, but may solicit and collect such information and data on a voluntary basis.

E. 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 and in formulating recommendations called for in subsection F of this section . In this connection, the Board may cooperate with all include committee membership for branches or agencies of the federal government, with all branches or agencies of the state, 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) F. Except as otherwise authorized by this chapter or any other provision of law the The Board shall not take action to implement such prepare plans or programs but shall recommend to the General Assembly any additional legislation and shall include in reports prepared under subsection B of this section recommended actions to be considered by the General Assembly, the agencies of the state and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of such plans or programs prepared under subsection C of this section .

G. In addition to the preparation of plans called for in subsection A of this section, the Board, upon written request of a political subdivision of the state, shall provide water supply planning assistance to such political subdivision, to include assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits , or other such planning activities to facilitate intergovernmental cooperation and coordination.

APPENDIX B

Alternative B

A BILL to amend the Code of Virginia by adding in Title 62.1 sections numbered 62.1-11.1 through 62.1-11.5, and to repeal § 62.1-12 of the Code of Virginia, the added and repealed sections pertaining to and clarifying certain riparian rights.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 62.1 sections numbered 62.1-11.1 through 62.1-11.5 as follows:

§ 62.1-11.1. *Maximum Utilization of State Waters.*—The health, safety, and general welfare of the citizens of the Commonwealth require that available water supplies be applied to optimum beneficial use consistent with social, economic, and environmental well-being.

§ 62.1-11.2. *Harmless Use.*—A. Any beneficial use of state waters is lawful as against any person unless such use causes harm to such person. Where perceptible harm does not occur at the initiation of a water use but arises at a later time, a cause of action does not arise until this later time.

B. For purposes of this section, harm means (i) interference with an existing valid water use or existing enjoyment of riparian land, including recreational use; or (ii) a decrease in the market value of riparian land.

§ 62.1-11.3. *Non-Riparian Water Use.*—A. No beneficial use of state waters shall be viewed as unlawful solely on the basis of its non-riparian location. Validity of any water use on non-riparian land shall be determined by the riparian doctrine standard of reasonableness. Factors to be considered shall include, but not be limited to, the social utility of the proposed non-riparian use; the availability, at reasonable costs, of practicable alternative sources of water supply for the proposed use, including ground water; the nature and extent of the impact of the proposed use on other water uses, including maintenance of instream flows for fish and wildlife purposes and protection of other environmental values; and the social utility of adversely affected uses.

B. No interbasin transfer in excess of an average rate of 100,000 gallons per day shall be initiated without approval of the State Water Control Board. The Board shall hear all substantially adversely harmed persons, including but not limited to those jurisdictions transferring or receiving such transfer. After evaluating all the evidence in terms of the reasonableness of the proposed transfer including but without limitation to the factors specified in paragraph A of this section, the Board may prohibit the transfer, approve the transfer as proposed; or approve the transfer subject to specific conditions, including the payment of compensation to adversely affected parties.

When the definition of river basins is at issue, the Board shall make such determinations and resolve the questions of its jurisdiction prior to consideration of the requested approval for water transfer.

C. Any party to a hearing before the Board may appeal the Board's ruling on the transfer. Any appeal shall be filed with the clerk of the Supreme Court. The Chief Justice of the Supreme Court shall appoint a special court composed of three circuit court justices from jurisdictions remote from the jurisdictions affected by the proposed transfer. All such appeals shall be heard de novo.

D. The decision of the State Water Control Board or the special court shall be dispositive of all water rights issues relating to the subject water transfer. All decisions of special courts may be appealed to the Supreme Court.

§ 62.1-11.4. *Municipal Water Use of Streams.*—Due to the importance of centralized public water supplies to a large proportion of the population of the Commonwealth, withdrawal of water for this purpose is hereby recognized as a valid riparian use of streams. The extent of a particular municipal water right shall be determined by application of the riparian doctrine standard of reasonableness to the facts of each case.

§ 62.1-11.5. Public Water Supply Conflicts—Any conflicts arising from water use by public water suppliers serving different counties, cities, or towns shall be brought before the State Water Control Board for hearing and determination of the conflict. Any public water supplier may request such a hearing. Any party to such a hearing may appeal the decision of the Water Control Board by filing a notice of such appeal with the clerk of the Supreme Court. The Chief Justice of the Supreme Court shall appoint a special court composed of three circuit court justices remote from the jurisdictions served by the suppliers. The special court shall hear the matter de novo with further right of appeal to the Supreme Court.

2. That § 62.1-12 of the Code of Virginia is repealed.

APPENDIX C

Alternative C

**TITLE 62.2
Virginia Water Law**

- Chapter 1. Administrative Structure and Operation**
- 2. Regulation of Consumptive Uses**
- 3. Construction, Operation, and Regulation of Water Wells**
- 4. Water Quality Protection**

**CHAPTER 1
ADMINISTRATIVE STRUCTURE AND OPERATION.**

**Article 1.
General Provisions.**

Section

- 62.2-1. Short title.**
- 62.2-2. Declaration of Policy.**
- 62.2-3. Definitions.**
- 62.2-4. Regulated Water.**
- 62.2-5. Authority of Board in regard to former rules, regulations, and local ordinances.**
- 62.2-6. Prior statutory authority of eminent domain, condemnation.**

**Article 2.
Administration Generally.**

Section

- 62.2-7. Board Created**
- 62.2-8. Composition of Board**
- 62.2-9. Terms of Board Members**
- 62.2-10. Selection of Chairman; Seniority.**
- 62.2-11. Compensation and expenses of members**
- 62.2-12. Meetings, records of proceedings, quorum.**
- 62.2-13. Executive Director.**
- 62.2-14. Legal representation of Board.**
- 62.2-15. Employment of personnel**
- 62.2-16. General powers and duties of Board.**

**Article 3.
State Water Use Plan.**

Section

- 62.2-17. Continuing study of water resources of the Commonwealth.**
- 62.2-18. Directive of State water use plan.**
- 62.2-19. Determinations to be made by Board.**
- 62.2-20. Same.**
- 62.2-21. Granting of permits.**
- 62.2-22. Board to consider public recreation; environmental protection.**
- 62.2-23. Undesirable uses.**

- 62.2-24. Revision of State water use plan.
62.2-25. Public hearings required prior to ~~modification~~ of State plan.

**Article 4.
State Water Plan.**

Section

- 62.2-26. State water plan.
62.2-27. Adoption of rules and regulations by the Board.
62.2-28. Enforcement proceedings before the Board.
62.2-29. User surveillance fee.
62.2-30. Establishment of water resources management account.

**Article 5.
Application and Notice.**

Section

- 62.2-31. Application for permit.
62.2-32. Same; notice.
62.2-33. Judicial relief, declaratory judgment, injunctions.

**Article 6.
Miscellaneous Provisions.**

Section

- 62.2-34. Acquisition of real property.
62.2-35. Penalties; common law remedies.

**CHAPTER 2
REGULATION OF CONSUMPTIVE USES.**

**Article 1.
Permitting.**

Section

- 62.2-36. Permits required.
62.2-37. Unauthorized withdrawals.
62.2-38. Inapplication to certain waters.
62.2-39. Conditions for a permit.
62.2-40. Interbasin transfer.
62.2-41. Reservation of certain water by Board.
62.2-42. Existing uses.
62.2-43. Initial permits for existing uses.
62.2-44. Time limitation for initial permit application.
62.2-45. ~~Compensation~~ if existing use not permitted.

**Article 2.
Permit Applications.**

Section

- 62.2-46. Permit applications.

- 62.2-47. Competing applications.
- 62.2-48. Preference to renewal applications in certain circumstances.
- 62.2-49. Duration of permits.
- ~~62.2-50. Same.~~
- 62.2-51. Notification and renewal of permit terms.
- 62.2-52. Renovation of permits.
- 62.2-53. Declaration of water shortage.
- 62.2-54. Condemnation of water rights.

CHAPTER 2
CONSTRUCTION, OPERATION, AND REGULATION OF WATER WELLS

Article 1
General Provisions.

Section

- 62.2-55. Definitions.
- 62.2-56. Additional powers and duties of Board.
- 62.2-57. Registration of existing wells.
- 62.2-58. Contents of registration report.
- 62.2-59. Board to maintain permanent record.
- 62.2-60. Denial of permit in certain circumstances.
- 62.2-61. Supervision of well construction and the installation of pumps and pumping equipment.
- 62.2-62. Marking of vehicles and equipment.

Article 2
Well Construction Permits.

Section

- 62.2-63. Permit for well construction.
- 62.2-64. Issuance of permit.
- 62.2-65. Notice of rejection.
- 62.2-66. Permit to be displayed.
- 62.2-67. Modification of permit.

Article 3
Pump and Pumping Equipment Permits.

Section

- 62.2-68. Permit for installation of pump and pumping equipment required.
- 62.2-69. Issuance of permit.
- 62.2-70. Notice of rejection.
- 62.2-71. Permit to be displayed.

Article 4
Notice of Rejection, Suspension, or Revocation of Permit.

Section

- 62.2-72. Notice of rejection.
- 62.2-73. Hearing required.
- 62.2-74. Suspension, revocation of permit.

**Article 5.
Miscellaneous Provisions.**

Section

- 62.2-75. Well completion report.
- 62.2-76. Well construction standards.
- 62.2-77. Failure to cap; waste.
- 62.2-78. Minimum standards for installation of pumps.
- 62.2-79. Well construction advisory board.
- 62.2-80. Artificial recharge.
- 62.2-81. Abandonment of wells.
- 62.2-82. Drainage wells.
- 62.2-83. Exemptions and limitations.

**CHAPTER 4
WATER QUALITY PROTECTION.**

**Article 1.
Administration Generally.**

Section

- 62.2-84. Purpose continued.
- 62.2-85. Control of water quality by State.
- 62.2-86. Waste discharge or other quality alterations of state waters.
- 62.2-87. Relation to existing water quality laws.
- 62.2-88. Additional powers and duties of Board to protect water quality.
- 62.2-89. Limitation on power to require construction of sewerage systems or sewage or other waste treatment works.
- 62.2-90. Extraordinary hardship program.

**Article 2.
Waste and Discharges.**

Section

- 62.2-91. Industrial wastes.
- 62.2-92. Other wastes.
- 62.2-93. Sewage systems, etc., under joint supervision of Board and Department of Health.
- 62.2-94. Board may prohibit discharge and prescribe terms for permits.
- 62.2-95. Approval of sewerage systems and sewage treatment works.
- 62.2-96. Information to be furnished to Board.
- 62.2-97. Private rights not affected.
- 62.2-98. Rules and regulations related to pollution from boats.

**Article 3.
Discharge of Oil into Waters.**

Section

- 62.2-99. Definitions.
- 62.2-100. Liability for permitting discharge of oil.
- 62.2-101. Discharge of oil prohibited.
- 62.2-102. Reporting of discharge.
- 62.2-103. Civil penalty.
- 62.2-104. Exceptions.
- 62.2-105. Federal legislation.

62.2-106. Virginia Oil Spill Contingency Fund.

**Article 4.
Water Quality Plan.**

Section

- 62.2-107. Composition of Water Quality Plan.
- 62.2-108. Plan to be reviewed.
- 62.2-109. Consultation with local governing bodies.
- 62.2-110. Public hearings required prior to modification of Water Quality Plan.
- 62.2-111. Pollution of underground waters.
- 62.2-112. Inspections.
- 62.2-113. Maintenance of certain records.
- 62.2-114. Fees.

**Article 5.
Miscellaneous Provisions.**

Section

- 62.2-115. Injunctions.
- 62.2-116. Local jurisdiction; conflicts.

**CHAPTER 1.
ADMINISTRATIVE STRUCTURE AND OPERATION.**

**Article 1.
General Provisions.**

§ 62.2-1. Short Title.—This Act shall be known and cited as the Virginia Water Law.

§ 62.2-2. Declaration of policy.—A. Recognizing that the waters of the State are the property of the State and are held in trust for the benefit of its citizens, it is declared that the people of the State, as beneficiaries of this trust, have a right to have the waters protected for their use.

B. There is urgent need for an accelerated program of comprehensive water resources planning to meet the rising water requirements of a growing population and expanding economy. The Virginia Water Law, with such future amendments, supplements, and additions as may be necessary, is accepted as the guide for developing and implementing this policy.

C. The Virginia Water Law shall be liberally interpreted to obtain maximum beneficial use of the water of the State for such purposes as domestic uses, power development, mining, industrial uses, and irrigation. However, adequate provision shall be made for the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and preservation and enhancement of waters of the State for navigation, public recreation, municipal uses, and public water supply; such objectives are declared to be in the public interest.

The public interest, health, safety, and welfare require that a sustained research program involving scientific, economic, social, institutional, and legal components be carried on to ensure that an adequate information base is available to address significant water resource issues on a timely basis.

E. The Virginia Water Law shall be liberally interpreted to protect and improve the quality of waters of the State and to provide that no person shall: (i) discharge into State waters inadequately treated sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or (ii) 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 unless such person shall have a certificate issued by the board. The people of the State have a substantial interest in the

prevention, abatement, and control of both new and existing water pollution, and the maintenance of high standards of water quality. The people of the State recognize the need for the State Water Resources Board to cooperate with agencies of other States and the federal government in carrying out these objectives.

~~§ 62-3 Definitions~~—The following words shall have the meanings respectively ascribed thereto unless the context clearly requires otherwise:

1. ~~Board~~—means the State Water Resources Board;
2. ~~Coastal waters~~—means waters of the Atlantic Ocean and the Chesapeake Bay within the jurisdiction of the State.
3. ~~Department~~—means the State Department of Health.
4. ~~Disposal System~~—means any system for disposing of wastes, either by surface or underground methods, including sewage systems, treatment works, disposal wells, and other systems but shall not include on site sewage disposal systems.
5. ~~Domestic Use~~—means any use of water for personal need and for ordinary, household purposes, including: (i) uses for drinking, bathing, cooking, and sanitation; (ii) uses for maintaining household pets and ordinary livestock kept for household sustenance; and (iii) uses for heating and cooling private residences and for maintaining non-commercial lawns, gardens, or orchards.
6. ~~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.
7. ~~Groundwater~~—means water beneath the surface of the ground, whether or not flowing through known and defined channels.
8. ~~Impoundment~~—means any lake, reservoir, pond or other containment of surface water occupying a bed or other depression in the earth's surface and having a discernible shoreline.
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. ~~Nonregulated use~~—means any use of water which is exempt from regulation by the provisions of this title.
11. ~~On-site Disposal System~~—means on-site domestic sewage septic tanks with subsurface disposal in horizontal drainfields.
12. ~~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.
13. ~~Owner~~—means any person having the legal right to control a discharge, or where that cannot be determined, the owner of the fee simple in the land from which the discharge is coming or originates.
14. ~~Outlet~~—means the terminus of a sewer system, or the point of emergence of any sewage, industrial waste, or other wastes or the effluent therefrom, into the waters of the State.
15. ~~Other water course~~—means any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flow be uniform or uninterrupted.
16. ~~Person~~—means any and all persons, natural or artificial, including any individual, firm, association, organization, partnership, business, trust, cooperative, company, the United States of

America, the Commonwealth, and all political subdivisions, districts, municipalities, and public agencies thereof.

17. 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 title.

18. Public water utility—means any person, as defined herein, who furnishes water for consideration to the general public.

19. Reasonable-Beneficial Use—means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose and in a manner which is both reasonable and consistent with the public interest. The placing of water rights in a "water banking system" is to be considered a reasonable-beneficial use during periods of shortages, emergencies, or both.

20. Rule—means a rule adopted by the Board to regulate the procedure of the Board pursuant to the provisions of this title.

21. 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.

22. 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.

23. Special order—means a special order issued pursuant to the provisions of this title.

24. Stream—means any river, creek, slough, or natural watercourse in which water usually flows in defined bed or channel. It is not essential that the flow be uniform or uninterrupted. The fact that some part of the bed or channel shall have been dredged or improved does not prevent the watercourse from being a stream.

25. Surface water—means both contained surface water—that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to State jurisdiction—and diffused surface water—that is, water occurring upon the surface of the ground other than in contained water bodies. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

26. The law or this law—means the law contained in this title as now existing or hereafter amended.

27. Wastewater treatment works—means any plant or other works used for the purpose of treating, stabilizing, or holding wastes but shall not include on-site sewage disposal systems.

28. Water banking system—means a system to facilitate the temporary transfer of a water right

(or a permit) from a willing seller to a new or existing user by sale or lease.

29. *Water or waters of the State*—means all water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction.

§ 62.2-4. *Regulated water*.—All waters of the State are subject to regulation under the provisions of this title unless the reasonable-beneficial use of water by any person is less than five thousand gallons per day except as provided in Chapter 3 of this title for well registration.

§ 62.2-5. *Authority of Board in regard to former rules, regulations, and local ordinances*.—No State or local government agency may enforce any ordinance, rule, or regulation that affects the use of water resources controlled under the provisions of this title, whether promulgated before or after the effective date hereof, unless the Board has approved such ordinance, rule, or regulation.

§ 62.2-6. *Prior statutory authority of eminent domain, condemnation*.—No state or local government agency or other person having the power of eminent domain or condemnation under the laws of this State, may exercise that power with respect to condemning property if the condemnation will materially affect water resources in the State, without the written permission of the Board.

Article 2. Administration Generally.

§ 62.2-7. *Board created*.—There is hereby created the State Water Resources Board which shall consist of seven members appointed by the Governor, subject to confirmation by the General Assembly.

§ 62.2-8. *Composition of Board*.—The members of the Board shall be citizens of the State; shall be selected from the State at large on the basis of merit without regard to political affiliation; and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and competence in the work of the Board. No officer, employee, or representative of any certificate holder, or of any industry, municipal corporation, or county which may become a certificate holder shall be appointed to the Board. Consideration shall be given to hydrologists, professional engineers with experience in water management or conservation, farmers, persons from the water utility industry, and environmentalists.

§ 62.2-9. *Terms of Board members*.—Each member shall serve for a term of five years and shall be eligible for reappointment for only one additional term except that:

a. None of the original appointees will be eligible for an additional term who have in fact served more than five years because of the staggered terms for the original appointees;

b. The term of the members first appointed shall expire as designated by the Governor, one at the end of three years, one at the end of four years, one at the end of five years, one at the end of six years, and one at the end of seven years; and

c. Any member appointed by the Governor to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term.

§ 62.2-10. *Election of chairman; seniority*.—The Governor shall designate a temporary chairman for the Board to serve in this capacity for the convening of the first meeting and the election of a chairman to serve for the first year. Thereafter members of the board shall elect annually a chairman and a vice chairman.

§ 62.2-11. *Compensation and expenses of members*.—No salary or compensation shall be allowed any member of the board for services thereon, but each member shall receive fifty dollars a day for attendance at meetings and hearings and his actual and necessary expenses incurred in the discharge of his official duties as a member or by direction or request of the board.

§ 62.2-12. *Meetings, records of proceedings, quorum*.—Regular meetings of the Board shall be

held monthly. Special meetings may be called by the chairman or at the request of a majority of the board. Five members in attendance shall constitute a quorum. A complete record of the proceedings of the Board shall be made and such record shall be open to public inspection.

§ 62.2-13. *Executive Director.*—The Governor shall appoint the Executive Director of the Board, subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor.

§ 62.2-14. *Legal representation of Board.*—The Attorney General shall represent the Board and the State in litigation concerning affairs of the Board unless another State agency, represented by the Attorney General, is a party to the action. In such case the State Board shall employ legal counsel to represent it.

§ 62.2-15. *Delegation of powers by the Board.*—For the purpose of administration, the Board shall delegate to the Executive Director responsibility for creating a staff to provide the administrative and technical support for the Board in its various activities according to the general guidelines to be set forth by the Board. The Board may further delegate to the Executive Director any of the powers and duties invested in it by this title except the adoption and promulgation of standards, rules, and regulations; the revocation of certificates; and the issuance, modification, or revocation of orders except in cases of emergency as described in § 62.2-88.10 of this Code.

§ 62.2-16. *General powers and duties of the Board.*—It shall be the duty of the Board and it shall have the authority to:

A. Carry out topographic surveys, research, and investigations into all aspects of water resources and water quality;

B. Contract and cooperate with the various agencies of the federal government, State and local administrative and government agencies, or private persons;

C. Enter at all reasonable times and in a reasonable manner upon any property other than dwellings, for the purpose of conducting investigations and studies, or enforcing any of the provisions of this title, being liable, however, for actual damage done;

D. Cooperate with other State agencies, county or other local government organizations or agencies created for the purpose of utilizing and conserving the waters of this State, and to assist such organizations and agencies in coordinating the use of their facilities and participate in any exchange of ideas, knowledge, and data with such organizations and agencies. For this purpose the Board may maintain an advisory staff of experts;

E. prepare, publish, and issue such printed pamphlets and bulletins as it deems necessary for the dissemination of information to the public concerning its activities;

F. Hire, appoint, and remove agents and employees including specialists and consultants;

G. Acquire, lease, and dispose of such real and personal property as may be necessary in the performance of its functions including the acquisition of real property for the purpose of conserving and protecting water and related resources pursuant to the provisions of this title;

H. Identify by continuing studies those areas of the State where salt water intrusion may be a threat to fresh water resources and report its findings to the boards of county supervisors, city councils, and the public;

I. 1. Provide such coordination, cooperation, or approval as is necessary to the effectuation of any plan or project of the federal government in connection with or concerning the water of the State except such matters as are delegated by this Code to other State agencies. The Board shall, subject to confirmation by the General Assembly, have power to approve or disapprove such federal plan or project on behalf of the State;

2. The Board shall, subject to confirmation by the General Assembly, act on behalf of the State in the negotiation and consummation of any agreement or compact with other State or states concerning waters of the State;

J. 1. Hold, annually, a conference on water resource development programs. Each agency, commission, district, municipality, or political subdivision of the State responsible for specific water resource development programs requiring federal assistance shall at such conference present its programs and projects and the needs thereof;

2. Upon termination of such conference, the Board shall select projects for presentation in the State program of public works which best represent the public welfare and the interest of the people of the State as required for the proper development, use, conservation, and protection of the waters of the State and land resources affected thereby. Thereafter, the Board shall present to the appropriate agencies or committees of the federal government a program of public works, requesting authorization of funds for each project.

K. To appoint in its discretion local advisory boards for the purpose of providing input and information to the Board for the purpose of carrying out the provisions of this title;

M. To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth;

N. To make reports concerning, and formulate recommendations based upon, water conservation studies to assure that present and future water needs of the citizens of the Commonwealth are met.

O. To study and investigate methods, procedures, devices, appliances, and technologies which could assist in water conservation or water consumption reduction;

P. To consider artificial recharge of water as a part of its overall plan for the purposes of replenishing groundwater supplies.

Q. To do all acts necessary and convenient to carry out the purposes of this title.

Article 3. State Water Use Plan.

§ 62.2-17. Continuing study of water resources of the Commonwealth.—A. The Board shall proceed as rapidly as possible to study existing water resources of the State, means and methods of conserving and augmenting such water resources, existing and contemplated needs and uses of water for protection of the environment, procreation of fish and wildlife, recreational use, improvement of water quality, irrigation, mining, power development, and domestic, municipal, and industrial uses, and all other related subjects including drainage, reclamation, floodplain zoning, and selection of reservoir sites.

B. The Board shall progressively formulate an integrated, coordinated program for the use and development of the waters of the State. This program, with such amendments, supplements and additions as may be necessary later, shall be known as the State Water Use Plan.

§ 62.2-18. Directives of State Water Use Plan.—The Plan shall be directed toward the achievement of the following objectives:

a. The attainment of maximum reasonable beneficial use of water for such purposes as referred to in § 62.2-17;

b. The proper economic development of the waters of the State;

c. The control of the waters of the State for such public purposes as navigation, drainage, sanitation, and flood control;

d. The attainment of adequate water quality as expressed in the State's Water Quality Plan; and

e. The implementation of the water resources policy expressed in § 62.2-2 of this Code.

§ 62.2-19. Determination to be made by Board.—For the purposes of this plan the Board shall describe all the water resources within the area. The Board shall determine:

- a. Presently exercised domestic uses and water permit rights; and
- b. The quantity of water available for application to reasonable beneficial uses in the future.

§ 62.2-20. Same.—A. The Board shall establish the following:

1. Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be harmful to the water resources and the ecology of the area;

2. Minimum lake level for all freshwater lakes and ponds in the area greater than twenty-five acres. The minimum level of a given lake or pond shall be the level at which further withdrawal shall be harmful to the water resources and ecology of the area; and

3. Minimum groundwater level. The minimum groundwater level shall be the level of groundwater in an aquifer at which further withdrawals would be harmful to the water resources of the State.

B. The minimum flow, minimum lake level, and minimum groundwater level shall be calculated by the Board using the best information available. Where appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The Board shall also consider and, at its discretion, may provide for the protection of nonconsumptive uses in the establishment of minimum flows and levels.

§ 62.2-21. Granting of permits.—The granting of permits pursuant to Chapter 2 of this title shall be conditioned in such a manner as to preserve minimum flows and levels established under Section 62.2-20.

§ 62.2-22. Board to consider public recreations; environmental protection.—The Board shall give careful consideration to the requirements of public recreation, the protection of the environment, and the procreation of fish and wildlife. The Board may prohibit or restrict other future uses on certain designated streams which may be inconsistent with these objectives.

§ 62.2-23. Undesirable uses.—The Board may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the Board may deny a permit under the provisions of Chapter 2 of this title.

§ 62.2-24. Revision of State Water Use Plan.—During the process of formulating or revising the State Water Use Plan, the Board shall consult with and carefully evaluate the recommendations of concerned federal, State, and local agencies.

§ 62.2-25. Public hearings required prior to adoption or modification of State Water Use Plan.—The Board shall not adopt or modify the State Water Use Plan or any portion thereof without first holding a public hearing on the matter. At least ninety days in advance of such hearings, the Board shall notify any affected government board, and shall give notice of such hearings by the publication within the affected regions pursuant to the provisions of the Administrative Process Act.

Article 4. State Water Plan.

§ 62.2-26. Coordination of State Water Use Plan and State Water Quality Plan.—A. The State Water Use Plan and the State Water Quality Plan, taken together, shall constitute a unified plan for water resource use, conservation, and development. This overall plan shall be known as the State Water Plan.

— B. Respective portions of the State Water Use Plan and the State Water Quality Plan shall be developed together to achieve maximum coordination.

§ 62.2-27. *Adoption of rules and regulations by the Board.*—The Board shall adopt, promulgate, and enforce, in accordance with the provisions of the Administrative Process Act, such rules and regulations as may be necessary or convenient to administer the provisions of this title.

§ 62.2-28. *Enforcement proceedings before the Board.*—All proceedings before the Board concerning the enforcement of any provision of this title or any rule or regulation adopted pursuant hereto, or the issuance, modification, or revocation of any permit or license under this title by the Board, shall be conducted in accordance with the provisions of the Administrative Process Act.

§ 62.2-29. *User surveillance fee.*—Every person who requires a permit under the Virginia Water Law shall be subject to a user-surveillance fee. This fee shall be an annual fee based on a schedule established by the Board. Such fee shall be utilized by the Board to cover the cost of the withdrawal permitting program established pursuant to the provisions of this title.

§ 62.2-30. *Establishment and maintenance of Water Resources Management Account; expenditures.*—A. There is hereby established a continuing fund in the General Fund in the State Treasury to be known as the Water Resources Management Account.

B. The Board may, subject to any limitation otherwise imposed by law, receive and accept in the name of the Commonwealth any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, or bequests. Such funds shall be deposited in the Water Resources Management Account.

C. Legislative appropriations, other than annual appropriations for the administration of this title by the State, shall be credited to the Water Resources Management Account.

D. In accord with the power granted to the Board, it may expend funds from the Water Resources Management Account for administration and to finance any project for the protection, conservation, and development of water resources of this Commonwealth.

E. The Board, by regulation, shall establish a schedule of fees to accompany applications for any permit authorized under the provisions of this title.

Article 5. Application and Notice.

§ 62.2-31. *Application for permit.*—Applications for a permit required under the provisions of this title shall be filed with the Board on an appropriate form provided by it.

§ 62.2-32. *Same; notice.*—Upon the receipt of the application, the Board shall cause a notice thereof to be published in a newspaper having a general circulation in the affected area. The notice shall be published at least once a week for four consecutive weeks. In addition, the Board shall send a copy of such notice to any person who has filed a written request for notification of any pending applications affecting this particular designated area. This notification shall be sent by regular mail prior to the date of last publication.

§ 62.1-33. *Citizen suit.*—A. Except as provided in subsection B of this section, any person having an interest which is or may be adversely affected may commence a civil action in Circuit Court on his own behalf against:

1. any person who is alleged to be in violation of
 - (a) conditions contained in any permit issued under the provisions of this title, or
 - (b) an order issued by the Board with respect to such permit; or

2. the Board where there is alleged a failure of the Board to perform any act or duty under the provisions of this title which is not discretionary with the Board.

The Circuit Courts shall have jurisdiction to enforce by injunction such permit, or such order,

or to order the Board to perform such act or duty, as the case may be and to apply any appropriate civil penalties under section 62.2-37 of this Code.

B. No action may be commenced under subsection A.1 of this section:

1. Prior to 60 days after the plaintiff has given notice of the alleged violation to the Board, and to any alleged violator of the permit or order; or

2. If the Board has commenced and is diligently prosecuting civil or criminal action in a court of the Commonwealth or of the United States to require compliance with the permit or order.

C. No action may be commenced under subsection A.2. of this section prior to 60 days after the plaintiff has given notice of such action to the Board.

D. Unless the parties otherwise agree, venue shall be as specified in § 8.01-261.1 of this Code.

In any action under this section, the Board, as a party, may intervene as a matter of right.

Article 6.

Miscellaneous Provisions.

§ 62.2-34. Acquisition of real property.—A. The General Assembly finds and declares it to be necessary for the public health and welfare that water and water-related resources be conserved and protected; the acquisition of real property for this objective shall constitute a public purpose for which public funds may be expended.

B. The Board is empowered and authorized to acquire real property and easements therein by purchase, gift, devise, lease, eminent domain, or otherwise for flood control, water management, or water and water-related resources conservation.

C. Lands, water areas, and related resources which may be acquired for this purpose shall include, but not be limited to streams and watercourses, parks and recreation areas, beaches, submerged lands, and other open areas, as well as necessary access sites and rights-of-way.

D. The provisions of this section shall not limit the exercise of similar powers delegated by statute to any State or local government agency.

§ 62.2-35. Penalties.—(a) Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any special final order of the Board, or final order of a court, lawfully issued as herein provided, shall be subject to a civil penalty not to exceed ten thousand dollars for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the State treasury.

(b) Any person who willfully or negligently violates any provision of this chapter, or who fails, neglects or refuses to comply with any special final order of the Board, or final order of a court, lawfully issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be fined not less than one hundred dollars nor more than twenty-five thousand dollars for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

(c) The provisions of (a) hereof shall not affect the funding of the Virginia Oil Spill Contingency Fund established pursuant to § 62.2-107 of this Code.

CHAPTER 2.
REGULATION OF CONSUMPTIVE USES.

§ 62.2-36. *Permits Required.*—No person shall make any withdrawal, diversion, impoundment, or consumptive use of water without obtaining a permit from the Board. However, no permit shall be required for a user whose use does not exceed five thousand gallons per day.

§ 62.2-37. *Unpermitted withdrawals.*—In the event that any person shall file a complaint with the Board that any other person is making a diversion, withdrawal, impoundment, or consumptive use of water not expressly exempt under the provisions of this title and without a permit to do so, the board shall cause an investigation to be made, take appropriate action, and notify the complainant thereof.

§ 62.2-38. *Inapplicability to certain waters.*—No provision of this chapter shall apply to coastal waters as defined in § 62.2-3 of this Code.

§ 62.2-39. *Conditions for a permit.*—A permit shall be granted unless the Board finds that the proposed use of water: (i) is not a reasonable-beneficial use as defined in § 62.2-3 of this code; (ii) will interfere with any presently existing legal use of water; (iii) is not consistent with the policy that the waters of the State are the property of the State and are held in public trust for the benefit of its citizens; and (iv) is not consistent with the provisions of the State Water Plan.

§ 62.2-40. *Interbasin transfer.*—A. The Board may authorize the holder of a use permit to transport and use surface or groundwater beyond overlying land or outside of the watershed from which it is taken if the Board determines that such transport and use are consistent with the public interest. Provided, however, prior to the issuance of any permit pursuant to the provisions of this section, the Board shall furnish notice of such application to the appropriate standing committee of the General Assembly. All applications which have been approved by the Board prior to the first day of December shall not be effective until the first day of February next following. In addition, the Board shall cause to be published once each week for four consecutive weeks notice of such application in newspapers of general circulation in any affected area.

B. Notwithstanding the provisions of subsection A. of this section, the Board shall develop a procedure for the granting of permits pursuant to this section in regard to the transfer of water within the same major river basin.

§ 62.2-41. *Reservation of certain water by Board.*—The Board by regulation may reserve from use by permit applications water in such locations and quantities and for such seasons of the year as in its judgment may be required to implement a provision of the State Water Plan. Such reservation shall be subject to periodic review and revision due to changed conditions, provided, however, that all presently existing legal uses of water shall be protected.

§ 62.2-42. *Existing uses.*—All existing uses of water, unless otherwise exempt from regulation by the provisions of this title, may be continued after the effective date of this title only with a permit issued as provided in § 62.2-41 of this Code.

§ 62.2-43. *Initial permits for existing uses.*—The Board shall issue an initial permit for the continuation of all uses in existence before the effective date of this title upon application without further proceedings under § 62.2-48 of this Code if the existing use is a reasonable-beneficial use as defined in § 62.2-3 of this Code.

§ 62.2-44. *Time limitation for initial permit application.*—Applications for permit under the provisions of § 62.2-43 must be made within a period of three years from the effective date of this title. Failure to apply within this period shall create a conclusive presumption of abandonment of the use, and the user if he desires to revive the use must apply for a permit pursuant to the provisions of § 62.2-46 of this code.

§ 62.2-45. *Compensation if existing use not permitted.*—In the event that the Board refuses to issue a permit upon timely application pursuant to § 62.2-43 of this Code, user shall be allowed reasonable compensation amounting to reimbursement for any damages attributable to the lessening of his water supply and any expenses related thereto.

Article 2.
Permit Applications.

§ 62.2-46. Application for a permit.—A. All permit applications filed with the Board under this chapter and notice thereof required pursuant to § 62.2-31 et. seq. of this Code shall contain the name and address of the applicant; in the case of a corporation, the address of its principal business office, the date of filing, the date set for hearing, if any, the source of the water supply, the quantity of water applied for, the use to be made of the water and any limitation thereon, the place of use, the location of the well or point of diversion, and such other information as the Board may deem appropriate.

B. The notice shall state that written objections to the proposed permit may be filed with the Board by a specified date. The Board, in its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses.

C. If the proposed application does not exceed one hundred fifty thousand gallons per month, the Board may consider the application and any objections thereto without a hearing. If no objections to the applications are received, the Board, after proper investigation by its staff may in its discretion approve the application without a hearing if the proposed application does not exceed one million five hundred thousand gallons per month. Otherwise, the Board shall set a time for a hearing.

§ 62.2-47. Competing applications.—If two or more applications which otherwise comply with the provisions of § 62.2-39 of this Code are pending for a quantity of water that is inadequate for both or all, or which for any reason are in conflict, the Board shall allocate the water in a manner which best serves the public interest.

§ 62.2-48. Preference to renewal applications in certain circumstances.—In the event that two or more competing applications qualify equally under the provisions of § 62.2-47, the Board shall give preference to a renewal application over an initial application.

§ 62.2-49. Duration of permits.—Permits may be granted for any period of time not exceeding ten years. The Board may base duration of permits on a reasonable system of classifications according to source of supply, type of use, or both.

§ 62.2-50. Same.—The Board may authorize a permit of duration of up to fifty years in the case of a public water utility where such a period is required to provide for the retirement of bonds for the construction of water works and waste disposal facilities.

§ 62.2-51. Modification and renewal of permit terms.—A. A permittee may seek modification of any terms of an unexpired permit.

B. If the proposed modification involves an increase in water use of one hundred fifty thousand gallons per month or more the application shall be treated pursuant to the provisions of § 62.2-46 in the same manner as the initial permit application. Otherwise the Board may, at its discretion, approve the proposed modification without a hearing provided that the permittee establishes that (i) a change in condition has resulted in the water allowed under the permit becoming inadequate for the permittee's need, or (ii) the proposed modification would result in a more efficient utilization of water than is possible under the existing permit.

C. All permit renewal applications shall be treated pursuant to the provisions of § 62.2-46 of this Code in the same manner as the initial permit application.

§ 62.2-52. Revocation of permits.—After a hearing held in accordance with the Administrative Process Act the Board may revoke permits as follows:

A. For any material false statement in an application to continue, to initiate, or to modify a use, or for any material false statement in any report or statement of fact required of the user pursuant to the provisions of this title, the Board may revoke the user's permit, in whole or in part permanently.

B. For willful violation of the conditions of the permit, the Board may permanently or

temporarily revoke the permit, in whole or in part.

C. For violation of any provision of this title, the Board may revoke the permit, in whole or in part, until the permittee complies with all the provisions of this title.

D. For nonuse of water supply allowed by the permit for a period of two years or more, the Board may revoke the permit permanently and in whole unless the user can prove that his nonuse was due to extreme hardship caused by factors beyond his control.

§ 62.2-53. Declaration of water shortage.—A. The Board, by regulation, shall formulate a plan for implementation during periods of water shortage. As part of this plan the Board shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

B. The Board, by regulation, may declare that a water shortage exists within all or part of the state when insufficient water is available to meet the requirements of the permit system or the State Water Plan or, when conditions are such as to require temporary reduction in total water use within the area to protect waters resources from serious harm.

C. In accordance with the plan adopted under subsection A. of this section, the Board may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

D. A declaration of water shortage and any measure adopted pursuant thereto may be rescinded by regulation of the Board.

E. When a water shortage is declared, the Board shall cause notice thereof to be published in a prominent place and within a paper of general circulation throughout the affected area. Such notice shall be published each day for the first week of the shortage and once a week thereafter until the declaration is rescinded. Publication of such notice shall serve as a notice to all water users in the area of the condition of water shortage.

F. The Board shall notify each permittee in the affected area by regular mail of any change in the condition of his permit, any suspension of his permit, or of any other restriction on his use of water for the duration of the water shortage.

G. If an emergency condition exists due to a water shortage within any area of the state, and if the Executive Director, with the concurrence of the Board, finds that the exercise of the powers under this section are not sufficient to protect the public health, safety, or welfare or the health of animals, fish, or aquatic life, or public water supplies, or recreational, commercial, industrial, agricultural, or other reasonable uses, the Executive Director may issue orders reciting the existence of such an emergency and requiring that such action, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the state, be taken as the Executive Director deems necessary to meet the emergency.

H. An affected party to whom an emergency order is directed under subsection G. of this section shall comply immediately but may challenge such an order in a manner set forth in § 62.2-33 of this Code. The Board shall give such proceedings precedence over all other pending cases.

§ 62.2-54. Condemnation of water rights.—Public water utilities are hereby authorized to acquire by condemnation permitted water rights necessary for existing and future uses. A public water utility shall not acquire or hold any right to waste water, or to use water for other than its own purposes. It may, however, lease its unused water rights or permit others to use water above its existing needs, subject to the rights of the public water utility to apply such water to its uses as and when necessary thereafter exists.

CHAPTER 3
CONSTRUCTION, OPERATION, AND REGULATION OF WATER WELLS
Article 1.
General Provisions.

§ 62.2-55. *Definitions.*—The following words shall have the following meanings respectively ascribed thereto unless the context clearly requires otherwise:

1. *Abandoned Well*—means any well, the use of which has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair that continued use for the purpose of obtaining groundwater is impractical.

2. *Artificial Recharge*—means the intentional introduction of water into any underground formation.

3. *Installation of Pumps and Pumping Equipment*—means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrances to the well, and establishing seals and repairs, as defined in this section.

4. *Pump Installation Contractor*—means any person, firm, or corporation which is in the business of installing or repairing pumps and pumping equipment.

5. *Pumps and Pumping Equipment*—means any equipment or material utilized or intended for use in withdrawing or obtaining groundwater, including, without limitation, seals, tanks, fittings, and controls.

6. *Repairs*—means any change, replacement, or other alteration of any well, pump, or pumping equipment, which requires a breaking or opening of the well seal.

7. *Well*—means any artificial excavation constructed by any method which is capable of extracting water from, or injecting water into, the ground. It shall include, but not be limited to, water-table wells, artesian wells, core-boring holes, recharge wells, drainage wells, geothermal wells, waste disposal wells, and all excavations made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or coring, or for inserting media to repressure oil or natural gas-bearing formations, or storing petroleum, natural gas, or other products.

8. *Well Construction*—means the development of any well, including the construction, alteration, or repair thereof, but excluding the installation of pumps and pumping equipment.

9. *Well Driller*—means any person, firm, or corporation which constructs, alters, or repairs wells.

10. *Well log*—means a description of depths and lithologies encountered in a well, done by a well driller (driller's log) or by a geologist (geologist's log) from an examination of cuttings taken from a well while drilling. It shall include the type, diameter, length, and weight of all pipe and casing including screen (for which type, diameter, length and thickness shall be included) settings in relation to a known surface reference point.

11. *Well Seal*—means an arrangement or device, approved jointly by the Department and the Board, used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein and the pipe of a distribution system the purpose or function of which is to prevent pollutants and foreign objects from entering the well.

§ 62.2-56. *Additional Powers and Duties of Board.*—The Board shall:

A. *Require registration of all existing wells;*

B. *Require permits for well construction;*

C. *Require permits for the installation of pumps and pumping equipment;*

D. *Require well completion reports;*

E. *Develop well construction standards;*

F. *Develop pump and pump equipment installation standards; and*

G. Adopt, modify, promulgate, and enforce all rules, regulations, and orders necessary to carry out the provisions of this chapter.

§ 62-2-57. *Registration of Existing Wells.*—Any person owning or operating any well shall register said well with the Board. Registration shall be in such form and in such manner as may be prescribed by the Board.

§ 62-2-58. *Contents of Registration report.*—The registration report shall include:

1. The water use permit number;
2. The legal description of the land upon which the well is located;
3. The location of the well;
4. The purpose of the well;
5. The depth of the well;
6. The well log;
7. The diameter of the well;
8. The name of the well driller who constructed the well;
9. The maximum capacity of the well;
10. The name of the pump installation contractor who installed the pump and pumping equipment; and
11. Such other data as the Board may require.

§ 62-2-59. *Board to maintain permanent record.*—The Board shall maintain a permanent record in which shall be entered the information gathered from the persons owning or operating all wells reported.

§ 62-2-60. *Denial of permit in certain circumstances.*—In addition to the penalties prescribed in § 62-2-37 the Board may deny the issuance of a water use permit, until such time as the applicant registers all wells which such applicant owns or operates.

§ 62-2-61. *Supervision of Well Construction and the Installation of Pumps and Pumping Equipment.*—A. All well construction operations shall be performed under the direct and personal supervision of the registered well driller who received the permit for well construction.

B. All operations connected with the installation of pumps and pumping equipment shall be performed under the direct and personal supervision of the registered pump installation contractor who received the permit for installation of pump and pumping equipment.

§ 62-2-62. *Marking of Vehicles and Equipment.*—All registered well drillers and registered pump installation contractors shall cause all vehicles, trailers, and rigs used by them or their employees in the course of their business marked with legible identification numbers at all times. The identification number to be used shall be the registration number which appears on the registration certificate. The Board shall set out in detail in its rules and regulations the specific method and manner for marking vehicles and equipment.

Article 2. Well Construction Permits.

§ 62-2-63. *Permit for Well Construction Required.*—Prior to the beginning of construction of all wells, permission must be obtained from the Board by making written application for the construction on forms to be prescribed by the Board. The application shall be made by the well

driller who will perform the work and shall contain the following:

1. the name and registration number of the applicant;
2. the name and address of the person who will control and operate the well;
3. the number of the water use permit;
4. the location of the well;
5. the proposed depth and method of construction;
6. the size and expected capacity of the well;
7. the name and registration number of the pump installation contractor; and
8. such other information as the Board may require.

§ 62.2-64. *Issuance of Permit.*—The Board shall issue a permit whenever it finds that an application is in proper form and contains the required information, provided that, on the basis of the information therein contained, the proposed construction will not be contrary to applicable law, rules, orders, or regulations. Receipt of the permit by the well driller shall constitute permission to begin well construction. The permit shall also direct the well driller to file a well completion report pursuant to the provisions of this chapter.

§ 62.2-65. *Notice of Rejection.*—The Board shall issue a Notice of Rejection, pursuant to § 62.2-72 of this Code whenever it finds that an application fails to meet the requirements of this title or any rule, order, or regulation adopted pursuant hereto.

§ 62.2-66. *Permit to be Displayed.*—The permit shall be prominently displayed at the site of the well prior to beginning any work thereon and shall remain so displayed until construction is completed.

§ 62.2-67. *Modification of Permit.*—The holder of a permit under this section who desires to change the location of his well before construction is completed shall apply to the board for an amendment of his permit. The application shall contain the same information as required for an original application, plus information as to the manner of sealing or plugging the incomplete and abandoned well. If the board determines that the proposed well at the proposed new location will both serve the same use as the original well and draw upon the same supply of water and that the incomplete and abandoned well will be sealed or plugged so as to prevent waste of water and damage to the water supply so as not to be dangerous to public safety, it shall approve the application and issue an amended permit therefor.

Article 3.

Pump and Pumping Equipment Permit

§ 62.2-68. *Permit for Installation of Pump and Pumping Equipment Required.*—Prior to the beginning of the installation of pumps and pumping equipment, permission must be obtained from the Board by making written application for the construction on forms to be prescribed by the board. The application shall be made by the pump installation contractor who will perform the work and shall contain the following:

1. the name and registration number of the applicant;
2. the number of the water use permit;
3. the number of the well construction permit;
4. description of the pumps and pumping equipment to be installed; and
5. such other information as the governing board may require.

§ 62.2-69. *Issuance of Permit.*—The Board shall issue a permit whenever it finds that an application is in proper form and contains required information, provided that on the basis of the information therein contained, the proposed installation will not be contrary to applicable law, rules, orders, or regulations. Receipt of the permit by the pump installation contractor shall constitute permission to install pumps and pumping equipment. The permit shall also direct the pump installation contractor to file a well completion report pursuant to the provisions of this chapter.

§ 62.2-70. *Notice of Rejection.*—The Board shall issue a Notice of Rejection, pursuant to § 62.2-72 of this Code whenever it finds that an application fails to meet the requirements of this title or any rule, order, or regulation adopted pursuant hereto.

§ 62.2-71. *Permit to be Displayed.*—The permit shall be prominently displayed at the site of the well prior to beginning any work thereon and shall remain so displayed until the installation is completed.

Article 4.

Notice of Rejection, Suspension, or Revocation of Permit.

§ 62.2-72.—*Notice of Rejection.*

A. The Board shall issue a Notice of Rejection whenever it determines that an application for a permit under § 62.2-63 or § 62.2-68 fails to meet the requirements of this chapter or any rule, or regulation adopted pursuant thereto.

B. The Notice of Rejection Shall:

1. state the ground for rejection, and shall state any remedial action which may be taken to make such application acceptable for approval; and

2. be served in writing upon the persons signing the application by registered or certified mail.

§ 62.2-73. *Hearing required.*—Any applicant receiving a Notice of Rejection may obtain a hearing before the Board by filing within thirty days of the mailing of such Notice of Rejection a written petition requesting such hearing. The hearing before the Board shall be conducted in accordance with the provisions of the Administrative Process Act.

§ 62.2-74. *Suspension, Revocation of Permit.*—The Board may, upon investigation, suspend a permit and, after notice and hearing, in accordance with the Administrative Process Act, may extend such suspension or may revoke the permit. Such suspension or revocation may be made on any one or more of the following grounds:

a. material misstatement or misrepresentation in the application for a permit;

b. failure to comply with the provisions set forth in the permit;

c. willful disregard or violation of any provision of this chapter, or any rule or regulation promulgated pursuant hereto; or

d. material change of circumstances or conditions existing at the time such permit was issued.

Article 5.

Miscellaneous Provisions.

§ 62.2-75. *Well Completion Report.*—Within thirty days after the completion of the well, the well driller and pump installation contractor shall file, upon forms provided by the Board a written report with the Board. The report shall contain the following information:

A. a log consisting the depth, thickness, and character of the different strata penetrated and the location of water-bearing strata;

B. An accurate record of the work including:

- (1) a statement of the date of the beginning of work,*
- (2) the date of completion,*
- (3) the length, size, and weight of the casing and how the same is placed,*
- (4) the size of the drilled hole,*
- (5) where the well is sealed off and the type of seal,*
- (6) number of cubic feet per second (cfs) or gallons per minute (gpm) of flow from the well when completed, including the static water level and the pumping water level,*
- (7) pressure in pounds per square inch (psi) if it is a flowing well, and if nonflowing, the static water level and the water temperature, and*
- (8) a chemical analysis of a water sample drawn from the well for all wells producing thirty-five gallons per minute or more; and*

C. Such additional information as may be required by the Board to establish compliance with the terms of the permit, the provisions of this chapter, and all rules, regulations, and orders promulgated pursuant to this title.

§ 62.2-76. Well Construction Standards.—A. The Board shall adopt minimum standards for the construction of wells and the installation of pumps and pumping equipment.

B. The minimum standards for the construction of wells shall include, but not be limited to, the following provisions:

- 1. all wells shall be equipped with a device for measuring the amount of groundwater being withdrawn from the well, such device to be approved by the Board; however, such devices shall not be required on wells producing less than thirty-five gallons per minute unless otherwise determined by regulation of the Board.*
- 2. all wells shall be capped or equipped with a control valve, such cap and control valve to be approved by the Board;*
- 3. approved procedures for the plugging of wells;*
- 4. approved procedures for the grouting and sealing of wells; and*
- 5. criteria for the location of wells: (i) with respect to possible pollution sources, and (ii) with respect to maintaining the well in a sanitary condition.*

§ 62.2-77. Failure to Cap; Waste.—Should any well not be equipped with a cap or a valve as required by § 62.2-76 or should any well be allowed to flow so as to waste groundwater in violation of this chapter, or should any well be contaminated because of deficiencies as set forth in § 62.2-76, in violation of this chapter, then:

- 1. The Board shall, upon being informed of this fact, give notice to the owner of the land upon which the well is situated to correct the defect or waste as the case may be. If the defect or waste is not corrected within ten days after notice is given, the Board shall have the necessary valve, cap, plug, or other device installed upon the well.*
- 2. The cost of installation of the valve, cap, plug, or other device and the control of the flow from the well shall, if made or done by the Board, be at the expense of the owner and shall be a lien against the tract of land upon which the well is situated until the expense is paid. Said lien may be foreclosed in a civil action in any court of competent jurisdiction, and the court shall allow the plaintiff a reasonable attorney's fee to be set as a part of the cost.*

§ 62.2-78. Minimum Standards for installation of pumps.—The minimum standards for the installation of pumps and pumping equipment shall include, but not be limited to, the following:

- 1. The pumps and pumping equipment shall be installed so that the pumps and their surroundings can be kept in a sanitary condition.*
- 2. The pumps and pumping equipment shall be of a capacity consistent with the water need and the drawdown characteristic of the well.*
- 3. The pumps and pumping equipment shall be durable and reliable in character.*
- 4. The pumps and pumping equipment shall be constructed of material which will not create a toxic condition in the water.*
- 5. The pumps and pumping equipment shall provide reasonable protection against entrance of pollutants.*

§ 62.2-79. Well Construction Advisory Board.—The Board may appoint a six member well construction advisory board.

§ 62.2-80. Artificial Recharge.—No construction may be begun on a project involving artificial recharge as defined in this chapter without the written permission of the Board. Such application shall contain the detailed plans and specifications for the construction of the project. Should the application be rejected, the applicant may obtain a hearing before the Board by filing a written petition requesting such hearing. The hearing before the Board shall be conducted pursuant to the provisions of the Administrative Process Act.

§ 62.2-81. Abandonment of Well.—When a well is abandoned, the owner thereof shall fill and seal the well in a manner approved by the Board. Prior to abandonment the owner shall file with the Board a report showing the following:

- 1. the name and address of the owner;*
- 2. the water use permit number;*
- 3. the name and address of the registered well driller who will be employed to perform the work required for abandonment;*
- 4. the reason for abandonment; and*
- 5. a description of the work to be performed to effect the abandonment consistent with the standards adopted pursuant to § 62.2-76.*

§ 62.2-82. Drainage Wells.—All drainage wells shall conform to the provisions of this chapter as well as the provisions of Chapter 4 of this title (§ 62.2-84 et. seq.)

§ 62.2-83. Exemptions and Limitations.—No provisions of this chapter shall apply to:

- 1. Any distribution of water beyond the point of discharge from the storage or pressure tank, or beyond the point of discharge from the pump if no tank is employed; or*
- 2. Any well, pump, or other equipment used temporarily for dewatering purposes.*

CHAPTER 4
WATER, QUALITY PROTECTION.
Article 1.
Administration Generally.

§ 62.2-84. Purpose continued.—The policy as set forth in § 62.2-2 is further served by the specific provisions of this chapter which are designed to:

1. protect existing high quality State waters and restore all other State waters to such condition of quality that 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.

§ 62.2-85. Control of water quality by the State.—A. 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.

B. 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 Board 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.

§ 62.2-86. Waste discharge or other water quality alterations of state waters.—Except in compliance with a certificate issued by the State Board, no person shall (i) discharge into State waters sewage, industrial wastes, nor other wastes, nor any noxious or deleterious substances; or (ii) otherwise cause pollution of State waters.

§ 62.2-87. Relation to existing water quality laws.—The provisions of this chapter are intended to supplement existing laws and no part thereof shall be construed to repeal any existing laws specifically enacted for the protection of health or the protection of fish, shellfish and game of the State, except that the administration of any such laws pertaining to the pollution of State waters, as herein defined, shall be in accord with the purpose of this chapter and the general policies adopted by the Board.

§ 62.2-88. Additional powers and duties of the Board to protect water quality.—The State shall have the duty and the authority:

1. To exercise general supervision and control over the quality, of all State waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings, and special orders promulgated hereunder.

2. To study and investigate all problems concerned with the quality of State waters and to make reports and recommendations thereon.

3. To establish, after holding an evidential hearing as provided in § 9-6.14-8, such standards of quality for any State waters consistent with the general policy set forth in this title, and to modify, amend or cancel any such standards established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards thus established. The Board shall, from time to time, but at least once every three years, hold hearings for the purpose of reviewing the standards of quality, and as appropriate, adopting, modifying, amending, or cancelling such standards. Whenever the Board considers the adoption, modification, amendment, or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended, or cancelled.

4. To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this title. To this end the Board 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 balances remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

5. To issue certificates for the discharge of sewage, industrial wastes, and other wastes into or adjacent to State waters 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 Board and the owner involved, the hearing and notice may be dispensed with.

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

7. To adopt, amend, or cancel rules governing the procedure of the Board with respect to:

- (a) hearings,
- (b) the filing of reports,
- (c) the issuance of certificates and special orders, and
- (d) all other matters relating to procedures.

Public notice of every rule adopted pursuant to this section shall in accordance with the provisions of the Administrative Process Act.

8. To make such rulings pursuant to the provisions of this chapter as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

9. To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the State.

10. To issue special orders to owners:

- a. who are permitting or causing the pollution of State waters,
- b. who have failed to construct facilities in accordance with final approved plans and specifications,
- c. who have violated the terms and provisions of a certificate issued by the Board,
- d. who have failed to comply with a directive from the Board,
- e. who have contravened duly adopted and promulgated water quality control standards and policies or,
- f. who have otherwise violated the provisions of this chapter or the regulations of any Board decision adopted thereunder. These special orders shall require the owners to cease and desist from pollution of State Waters, to construct facilities in accordance with final approved plans and specifications, to comply with the terms and provisions of a certificate issued by the Board, to comply with any directive issued by the Board, to comply with duly adopted and promulgated water quality standards and policies, and to comply with the provisions of this chapter, or the regulations or any Board decision adopted thereunder, as the case may be.

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 shall be effective after service as provided in § 62.2-28; provided that if the Board finds that any such owner is grossly affecting or is likely to grossly affect (i) 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, it may issue, without advance notice or hearing, an emergency special order directing the owner to take corrective action and to cease such pollution immediately, and shall hold a hearing after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend, or cancel such emergency special order. If the Board finds that an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, it may enforce such special order in accordance with § 62.2-115.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.2-115 for any violation or violations of any provisions of the title or any certificate, regulation, or water quality standard duly promulgated hereunder.

11. To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in this State.

12. To develop a water quality plan pursuant to the provisions of this chapter.

13. To establish programs to implement the water quality plan provided in this chapter. In conjunction with this, the Board, 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 plan. In making such determinations, the Board is to seek the advice of local, regional, or State planning authorities.

14. 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.

15. To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into State waters in such quantity, concentration, or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Commission of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper. If no such settlement is reached within a reasonable time, the Board shall authorize its Executive Director to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

If the owner be a political subdivision of the State, the action may be brought in any circuit court within the territory embraced by such political subdivision. If the owner be an establishment, as defined in this code, the action shall be brought in the circuit 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 court in which such person or any of them reside.

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

The proceeds of any recovery under this subsection shall, when received by the Board, be applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The balance shall be paid to the Commission of Game and Inland Fisheries 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 waste, 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.

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

Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who adds or applies any chemicals or other substances that are recommended or approved by the Department to State waters in the course of processing or treating such waters for public water supply purposes, except where negligence is shown.

§ 62-89. Limitation on power to require construction of sewerage systems or sewage or other waste treatment works.—A. Nothing contained in this title shall be construed to empower the Board to require the State, or any political subdivision thereof, or any authority created under the provisions of § 15.1-1241 of this Code to construct any sewerage system, sewage treatment works, or water treatment plant waste treatment works or systems 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 Board shall have previously committed itself to provide financial assistance from federal and State funds equal to the maximum amount provided for under Section 8 or other applicable sections of the Federal Water Pollution Control Act (P. L. 84-660, as amended), or unless the State or political subdivision or authority agrees, or is directed by the Board with the concurrence of the Governor, to proceed with such construction, subject to reimbursement under Section 8, or other applicable sections of such federal act.

B. The restrictions of subsection A. of this section shall not apply to those cases where existing sewerage systems or sewage or other waste treatment works cease to perform in accordance with their approved certificate requirements.

C. Nothing contained in this title shall be construed to empower the Board to require the State, or any political subdivision thereof, to upgrade the level of treatment in any works to a level more stringent than that required by applicable provisions of the Federal Water Pollution Control Act, as amended.

§ 62-90. Extraordinary Hardship Program.—There is hereby established a supplemental program of financial assistance for the construction of water quality control facilities by political subdivisions of the Commonwealth. All sums appropriated for this program shall be apportioned by the Board among the political subdivisions qualifying, to provide financial assistance in addition to that otherwise available to help relieve extraordinary hardship in local funding of the construction of such facilities.

Article 2. Waste and Discharges.

§ 62-91. Industrial wastes.—A. Any owner who erects, constructs, opens, reopens, 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 Board for the treatment or control of such industrial wastes or other wastes. Applications for such discharge shall be made to the Board and shall be accompanied by pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the Board.

1. 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 prescribe.

2. The Board shall review the application and the information that accompanies it as soon as practicable and make a ruling within a period of four months from the date the application is filed with the Board approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the discharge of the industrial wastes or other wastes into State waters or for the other alteration of

the physical, chemical, or biological properties of State waters, as the case may be. If the application is disapproved, the Board shall notify the owner as to what measures, if any, the owner may take to secure approval.

B. Any owner operating under a valid certificate issued by the Board 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 Board 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 Board 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 owners of the time, place and purpose thereof. No hearing or notice is required if such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved.

The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order.

§ 62-292. Other wastes.—A. Any owner who handles, stores, distributes, or produces other wastes as defined in this title, any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the Board install facilities approved by the Board or adopt such measures approved by the Board as are necessary to prevent the escape, flow, or discharge into any State waters when the escape, flow, or discharge would cause pollution of such State waters.

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

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

§ 62-293. Sewerage systems, etc., under joint supervision of Board and Department of Health.—A. All sewerage systems and sewage treatment works shall be under the general supervision of the State Department of Health and the Board jointly.

B. The State Department of Health shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works, as to the most appropriate type of treatment, but the Department shall not prepare plans, specifications, or detailed estimates of cost for any improvement of an existing or proposed sewage treatment works.

C. 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, when requested by the Board, to the State Department of Health from time to time information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required. The State Department of Health shall furnish the Board with such available information as the Board requires.

§ 62-294. Board may prohibit discharge and prescribe terms for permits.—A. Notwithstanding any other provision of this title the Board shall have the authority to prohibit any present or proposed discharge of sewage, industrial wastes, or other wastes into any sewerage system or treatment works when it has determined that such discharge would threaten the public health and safety, or would substantially interfere or be incompatible with the treatment works, or would substantially interfere with the usage of State waters as designated by the Board. Before making any such determination, the Board may consult with and receive the advice of the Department.

B. The Board shall have the authority to issue permits which prescribe the terms and conditions upon which the discharge of sewage, industrial wastes, or other wastes may be made into any sewerage system or treatment works. The Board may revoke or amend any such permit for good cause and after proper hearing. Notwithstanding the requirements for notice and a hearing, the Board may, after consultation with the Department, summarily revoke or amend such permit when it determines that the permitted discharge poses a threat to the public health and safety, or is interfering substantially with the treatment works, or is grossly affecting the usage of State waters as designated by the Board. In such case, the Board shall hold a hearing as soon as practicable but in no event longer than twenty days after the revocation or amendment with reasonable notice to the owner as to the time and place thereof to affirm, modify, or rescind the summary revocation or amendment of such permit.

C. The Board shall have the authority to require that any permit for a discharge from any sewerage system or wastewater treatment works include conditions (i) requiring the identification in terms of character and volume of pollutants of any significant source introducing pollutants into such wastewater treatment works, and (ii) requiring a program which would prohibit any present or proposed discharge of sewage, industrial wastes, or other wastes into any sewerage system or wastewater treatment works when such discharge would threaten the public health and safety, or would interfere with, pass through, or otherwise be incompatible with such wastewater treatment works, or would substantially interfere with usage of State waters as designated by the Board.

D. Nothing in this section shall limit the authority of the Board to proceed against such owner directly under § 62.2-35 after the Board has prohibited discharge, or after the Board has summarily amended or revoked the permit which authorized the discharge. No hearing or notice is required if a proposed revocation or amendment is mutually agreeable to the Board and the owner.

§ 62.2-95. Approval of sewerage systems and sewage treatment works.—A. Before any owner may erect, construct, open, expand or operate 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 concurrently with the Department and the Board an application for a certificate in scope and detail satisfactory to the Department and the Board.

B. If the application involves a system or works 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 Board may prescribe. The Department shall review the application promptly to determine whether it is complete, and if it is complete, shall advise the Board of the requirements necessary to protect public water supplies and shellfish beds. Upon completion of advertising, the Board shall determine if the application is complete, and if so, shall act upon it within twenty-one days of such determination. The Board shall approve such application if it determines that minimum treatment requirements will be met and that the discharge will not result in violations of water quality standards. If the Board disapproves the application, it shall state what modification or changes, if any, will be required for approval.

C. After the application has been approved by the Board, the owner shall file concurrently with the Department and the Board copies of pertinent plans, specifications, maps, and such other information as may be required, in scope and detail satisfactory to the Department and the Board. After it determines that such plans are complete, the Department shall then review the plans without delay and file with the State Board within sixty days a report in which it recommends that the plans be approved or disapproved. If such plans are not recommended for approval, the report shall state what modifications, if any, or changes would be required to make the plans acceptable to the Department.

D. The Board shall review the plans and the report from the Department and make a ruling within twenty-one days approving or disapproving the plans and stating the grounds for conditional approval or disapproval. If they are approved, the Board shall grant a certificate authorizing construction of the system or works.

E. Any owner operating under a valid certificate issued by the Board 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 Board within a reasonable time

to meet such new requirements. The Board 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. No hearing or notice is required if such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved.

F. The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order pursuant to the provisions of this chapter.

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

§ 62.2-96. Information to be furnished to Board.—The Board 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 title. The Board shall not at any time disclose to any person other than the appropriate officials of the Environmental Protection Agency pursuant to the requirements of the Clean Water Act of 1977 (P.L. 95-217) any secret formulas, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction.

§ 62.2-97. Private rights not affected.—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.

§ 62.2-98. Rules and regulations related to pollution from boats.—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 the State. No such regulation shall impose restrictions which are more restrictive than the regulations applicable under federal law; provided, however, the Board may adopt such regulations as are reasonably necessary with respect to vessels regularly berthed in marinas or other places where vessels are moored, in order to limit or avoid the closing of shellfish grounds.

In formulating such rules and regulations, the Board shall consult with the State Department of Health, the Commission of Game and Inland Fisheries, and the Marine Resources Commission for the purpose of coordinating such rules and regulations with the activities in such agencies.

Violation of such rules and regulations shall constitute 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.

Article 3. Discharge of Oil into Waters.

§ 62.2-99. Definitions.—The following words as used in this article shall have the meaning respectively ascribed thereto unless the context clearly requires otherwise.

1. Discharge—means any spillage, leaking, pumping, pouring, emitting, emptying, or dumping.
2. Oil, petroleum products and their by-products—means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.
3. Vessel—means any type of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.
4. Facility—means any development or installation, either onshore or offshore, both within and without Virginia that deals in, stores, or handles oil, petroleum, or any petroleum product or by-product.
5. Vehicle—means any motor vehicle, rolling stock, or other artificial contrivance for transport, whether self-propelled or otherwise, except vessels.

§ 62.2-100. *Liability for permitting discharge of oil.*—A. Any person, firm or corporation causing or permitting a discharge of oil into State waters or owning or operating any facility, vessel or vehicle from which there is a discharge of oil into State waters, shall be liable to the Commonwealth of Virginia for all costs of investigation, cleanup, abatement, containment, removal and disposal of the oil and all property damage incurred as a result of such discharge by the State or a political subdivision thereof, and to any person showing damage to his property resulting from such discharge. In any suit to enforce the claims under this article, it shall not be necessary for the State, political subdivision, or person showing property damage to plead or prove negligence in any form or manner. It shall be a defense that the discharge was caused solely by (i) an act of God, (ii) an act of war, or (iii) an act or omission of a third party, or any combination of the foregoing.

B. Notwithstanding the foregoing, except where the claimant shall prove negligence on the part of the person, firm or corporation causing or permitting a discharge of oil, the liability of the owner or operator of a vehicle under this article for a single discharge shall not exceed one million dollars; the liability of the owner or operator of a vessel or facility under this article for a single discharge shall not exceed five million dollars.

§ 62.2-101. *Discharge of oil prohibited.*—A. The discharge of oil into or upon the waters of the Commonwealth is prohibited.

B. The Board may proceed against any person violating subsection A of this section as hereinabove provided in this title, and in addition may require such person to take such action as may be required to abate any pollution so caused. In any proceeding for a civil penalty for the discharge of oil brought by the Board pursuant to this article, it shall not be necessary for the Board to plead or prove negligence in any form or manner. It shall be a defense (i) that the discharge was caused solely by an act of God, act of war, or an act or omission of a third party, or any combination of the foregoing, or (ii) that the owner or operator has made prompt, reasonable and appropriate efforts, within its financial and technological abilities, to report, abate, contain, and remove the discharge.

C. In the event that a discharge of oil occurs, and it cannot be determined immediately the person responsible therefor, or if the owner or operator is unwilling or unable promptly to abate, contain, and remove the discharge, the Board may take such action as is necessary to abate, contain, remove, and dispose of the discharge, including the engagement of contractors or other competent persons. The costs of such abatement, containment, removal, and disposal shall be paid from the Virginia Oil Spillage Contingency Fund.

§ 62.2-102. *Reporting of discharge.*—Any person, firm, or corporation owning or operating any facility, vessel or vehicle from which there is a discharge of oil into State waters, or a discharge of oil which may reasonably be expected to enter State waters, shall, immediately upon learning of said discharge, notify the Board of such discharge. Any such person, firm or corporation who fails to so notify the Board shall be subject to a civil penalty as provided in § 62.1-103. No penalty shall be imposed under this section when the owner or operator has promptly reported the spill to federal authorities designated pursuant to 33 U.S.C.A., 1321.

§ 62.2-103. *Civil penalty.*—A. The civil penalty for failure to report a discharge under this section shall be within the discretion of the court but shall not exceed the following maximum amounts, based upon the amount of oil spilled:

- (i) up to 2,500 gallons, \$250
- (ii) 2,501 gallons to 10,000 gallons, \$500
- (iii) more than 10,000 gallons, \$10,000

in determining the amount of a penalty for failure to report under this section, the court shall consider the appropriateness of the penalty to the size of the business of the owner or operator charged, the effect of the penalty on the owner or operator's ability to continue in business, and the gravity of the violation.

B. In determining whether or not it shall recommend imposition of a penalty for failure to report under this section, the Board shall consider in each case the gravity of the violation, any

circumstances which would have made reporting unreasonably difficult or impossible, and other factors which would mitigate or explain failure to report.

§ 62.2-104. *Exceptions.*—Nothing in this article shall apply to:

1. normal discharges from properly functioning vehicles and equipment, marine engines, outboard motors or hydroelectric facilities;
2. accidental discharges from farm vehicles, or noncommercial vehicles;
3. accidental discharges from the fuel tanks of commercial vehicles that have a fuel tank capacity of one hundred fifty gallons or less; or
4. discharges authorized by a valid permit issued by the Board pursuant to this chapter or by the United States Environmental Protection Agency.

§ 62.2-105. *Federal legislation.*—A. Should the Congress after January one, nineteen hundred seventy-eight, adopt legislation establishing a comprehensive system of liability and compensation for oil spill damage and cleanup costs, the Board, before proceeding against any owner or operator for recovery of damages and costs pursuant to this article, shall first determine that a proceeding brought pursuant to such federal law would not be in the best interests of the Commonwealth. This subsection shall not apply to any action for penalties brought pursuant to this article.

B. Should the Congress adopt a comprehensive system of liability and compensation for oil spill damages and cleanup costs, including liability limits established by regulation under federal laws by the United States Secretary of Commerce or the United States Secretary of Transportation, such federal limits of liability shall apply to any action brought by the Commonwealth for damages and cleanup costs pursuant to this article, notwithstanding any other limits of liability contained herein.

In the event that such a federal law is enacted, the Board may request the General Assembly to conduct a study to determine whether the liability limits established by federal law are in the best interests of the Commonwealth.

§ 62.2-106. *Virginia Oil Spill Contingency Fund.*—A. The Virginia Oil Spill Contingency Fund, hereinafter referred to as the "Fund," is hereby established as a nonlapsing, revolving fund to be used by the Board for the purposes set forth herein. Additional appropriations from the General Fund may be authorized to carry out the purposes of this article. All expenses, costs, and judgments recovered pursuant to this article, and all moneys received as reimbursement in accordance with applicable provisions of federal law, shall be and hereby are appropriated to the Fund. All civil penalties recovered pursuant to this article shall be paid into the General Fund of the State Treasury. The Governor may, at any time, transfer into and for the use of the Fund, moneys from the General Fund in such amount as not to exceed the balance of the penalties paid into the General Fund less the moneys transferred to the Fund pursuant to this section. No moneys shall be credited to the balance in the Fund until they have been received by the Fund.

The Fund shall be administered by the Board consistent with the purposes of this article and in accordance with the following provisions:

1. The Fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.

2. Disbursements from the Fund may be made for the following purposes and no others:

(i) All costs and expenses, including but not limited to personnel, administrative, and equipment costs and expenses, directly incurred by the Board or by any other State agency, in and for the abatement, containment, removal and disposal of oil, (ii) Procurement, maintenance, and replacement of materials, equipment, and supplies, in such quantities and at such locations as the Board may deem necessary, for the abatement, containment, removal, and disposal of oil and (iii) Costs and expenses, incurred by the Board or by any other State agency, acting at the direction of the Board, for the protection, cleanup and rehabilitation of waterfowl, wildlife shellfish beds, and other natural resources, damaged or threatened by the discharge of oil owned by the Commonwealth or held in trust by the Commonwealth for the benefit of its citizens.

B. The Board shall promptly recover to the use of the Fund, from the owner or operator causing the discharge or from the federal government jointly and severally, all sums owed thereto or expended therefrom for the abatement, containment, removal and disposal of oil and for the protection, cleanup and rehabilitation of waterfowl, wildlife and other natural resources damaged or threatened by the discharge of oil. Requests for reimbursement not paid within sixty days of demand shall be referred to the Attorney General for collection, and the Board shall be allowed to recover all legal and court costs and other expenses incident to such actions for collection.

Article 4.
Water Quality Plan.

§ 62.2-107. *Composition of Water Quality Plan.*—A. The State water quality plan shall consist of the following:

1. Water quality standards for all waters of the State, such standards to consist of receiving water standards and where applicable effluent standards;
2. Water quality objectives for planning and operation of water resource development projects for water quality control activities, and for the improvement of existing water quality;
3. Other principles and guidelines deemed essential by the Board for water quality controls; and
4. A program of implementation for those waters which do not presently meet established water quality standards.

§ 62.2-108. *Plan to be reviewed.*—The State Water Quality Plan shall be periodically reviewed and may be revised.

§ 62.2-109. *Consultation with local governing bodies.*—During the process of formulating or revising the State Water Control Quality Plan, the Board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

§ 62.2-110. *Public hearings required prior to modification of Water Quality Plan.*—The Board shall not adopt or modify the State Water Quality Plan or any portion thereof until a public hearing is held. At least ninety days in advance of such hearing the Board shall notify any affected governing boards, and shall give notice of such hearing by publication within the affected region pursuant to the provisions of this title.

§ 62.2-111. *Pollution of underground waters; permits.*—A. No person shall use any cavity, sink, or driven or drilled well for the purpose of draining any surface water or discharging any sewage, industrial, or other wastes into underground waters of the state without first obtaining a discharge permit from the Board under the provisions of this title.

B. This section shall not limit the exercise of the Department of any powers delegated to it by statute over underground waters of the State.

§ 62.2-112. *Inspections.*—A. The Board shall have the power to enter at reasonable times and in a reasonable manner upon any private or public property other than dwelling places for the purpose of inspecting and investigating conditions relating to water quality.

B. Such investigation shall include engineering studies, bacteriological, biological, and chemical analysis of the water, and the location and character of the source or sources of contamination as may be necessary.

§ 62.2-113. *Maintenance of certain records.*—The Board may require the maintenance of records relating to the operation of disposal systems, and any authorized representative of the Board may examine and copy any such record of memoranda pertaining to the operation of disposal systems. Copies of such records shall be submitted to the Board upon request.

§ 62.2-114. *Fees.*—The Board may establish fees for the issuance and renewal of any permits established under this chapter. All funds collected under this provision shall be credited to the

Water Resources Management Account.

**Article 5.
Miscellaneous Provisions.**

§ 62-2-115. Injunctions.—A. Whenever it shall appear that any person is causing or threatens to cause an impairment of water quality in violation of any order of the Board, the Board may institute proceedings for injunctive relief from the circuit court to prevent the continuance of such action.

B. In a petition for injunctive relief, any previous findings of the Board after due notice and hearing shall be prima facie evidence of the fact or facts found therein. The court shall grant the injunction without the necessity of showing a lack of adequate remedy at law upon a showing by the Board that such person is violating or is about to violate the provisions of this title or is violating or about to violate any order or determination of the Board with respect to this title.

C. In such suit, the Board may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions as the facts may warrant.

§ 62-2-116. Local jurisdiction; conflicts.—No provision of this chapter or any ruling of the Board or a governing board is a limitation:

1. on the power of any local governmental agency to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity which might impair water qualities.

2. on the power of any State or local governmental agency to declare, prohibit, and abate nuisances;

3. on the power of any State agency in the enforcement of administration of any provisions of the law which it is specifically permitted or required to enforce or administer; or

4. on the right of any person to maintain at any time any appropriate action for relief against pollution under the common law.

APPENDIX D

SENATE JOINT RESOLUTION NO. ___

To continue the State Water Study Commission.

WHEREAS, the State Water Study Commission was created in 1977 pursuant to House Joint Resolution No. 236 to recommend to the General Assembly ways to address water supply and allocation problems, particularly in Northern and Southeastern Virginia; and

WHEREAS, the State Water Study Commission was continued by the adoption of Senate Joint Resolution No. 1 during the 1978 Session of the General Assembly, and Senate Joint Resolution No. 36 during the 1980 Session of the General Assembly; and

WHEREAS, the State Water Study Commission has observed that many of the present laws, doctrines, policies and practices of the Commonwealth applicable to the use and allocation of the water resources of the Commonwealth may be inadequate to assure economically and environmentally effective management; and

WHEREAS, there exist critical present and potential areas of concern with regard to the water supply of the Commonwealth; and

WHEREAS, the Commission worked diligently in developing various legislative proposals; however, much work remains to be done, including the holding of workshops to more fully develop these legislative proposals; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the State Water Study Commission is hereby continued. The Commission shall continue its study and shall thoroughly analyze the water supply and allocation problems of the entire Commonwealth, making such recommendations as it deems necessary and advisable. The State Water Control Board is directed to provide staffing and such other assistance as is deemed necessary by the Commission in order to complete its task. All agencies of the state shall assist the Commission upon request.

The membership of the Commission shall remain the same. If a vacancy occurs for any reason, it shall be filled in the same manner as the appointment of the original members.

All members of the Commission shall be entitled to such compensation as is set forth in § 14.1-18 for each day or part thereof devoted to their duties as members of the Commission. In addition to such compensation, all members shall be reimbursed for the actual and necessary expenses incurred in the performance of commission duties.

For these purposes and for such consultants and other services as the Commission may require, there is hereby allocated from the general appropriation to the General Assembly the unexpended balance of such sums as were allocated by Senate Joint Resolution No. 1 of 1978, estimated at \$35,000.

The Commission shall report to the Governor and the General Assembly no later than December 1, 1981.

APPENDIX E

SENATE JOINT RESOLUTION NO. 38

Passed by the House of Delegates and the Senate

March 8, 1980

To continue the State Water Study Commission.

WHEREAS, the State Water Study Commission was created in nineteen hundred seventy-seven pursuant to House Joint Resolution No. 236 to recommend to the General Assembly ways to address the water supply and allocation problems, particularly in Northern and Southeastern Virginia; and

WHEREAS, the State Water Study Commission was continued by the adoption of Senate Joint Resolution No. 1 during the nineteen hundred seventy-eight Session of the General Assembly; and

WHEREAS, the State Water Study Commission has observed that many of the present laws, doctrines, policies and practices of the Commonwealth applicable to the use and allocation of the water resources of the Commonwealth may be inadequate to assure economically and environmentally effective management; and

WHEREAS, there exist critical present and potential areas of concern with regard to the water supply of the Commonwealth; and

WHEREAS, the Commission worked diligently, however much work remains to be done, including the receipt and approval of consultant's work; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the State Water Study Commission is hereby continued. The Commission shall continue its study and shall thoroughly analyze the water supply and allocation problems of the entire Commonwealth, making such recommendations, including legislation, as it deems necessary and advisable. The State Water Control Board is directed to provide staffing and such other assistance as is deemed necessary by the Commission in order to complete its task. All agencies of the State shall assist the Commission upon request.

The Commission shall be composed of twelve members to be appointed as follows: the Committee on Privileges and Elections of the Senate shall appoint three persons from the membership of the Senate; the Speaker of the House of Delegates shall appoint five members from the membership thereof; and the Governor shall appoint four persons from the State at large. If a vacancy occurs for any reason, it shall be filled in the same manner as the appointment of the original members. When filling appointments, the appointing authority shall recognize that the water supply and allocation problems are interrelated and are Statewide in scope rather than being confined to any specific region or area.

All members of the Commission shall be entitled to such compensation as is set forth in § 14.1-18 for each day or part thereof devoted to their duties as members of the Commission. In addition to such compensation, all members shall be reimbursed for the actual and necessary expenses incurred in the performance of Commission duties.

For these purposes and for such consultants and other services as the Commission may require, there is hereby allocated from the general appropriation to the General Assembly the unexpended balance of such sums as was allocated by Senate Joint Resolution No. 1 of 1978, estimated at seventy-five thousand dollars.

The Commission shall report to the Governor and the General Assembly no later than December one, nineteen hundred eighty, and shall set forth such measures as may be necessary to guarantee to all the citizens of the Commonwealth an adequate and dependable water supply. The Commission shall expire on February 28, 1981.