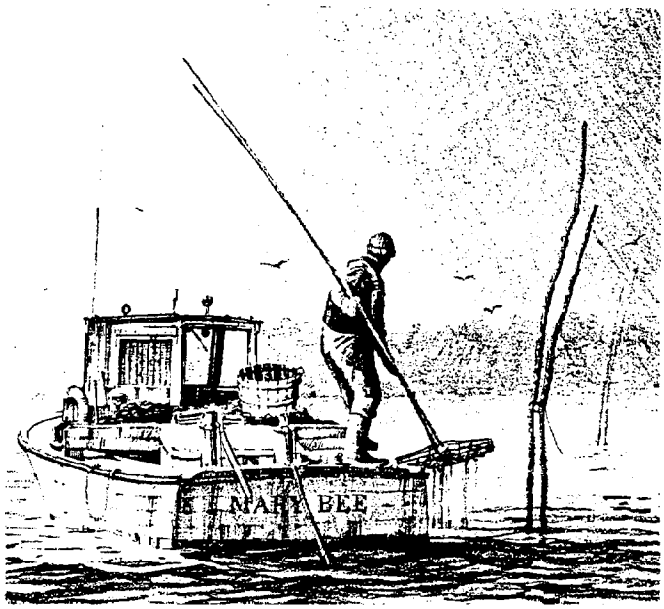
Coastal Zone
Information
Center

Commonwealth of Virginia Coastal Resources Management Program and Draft Environmental Impact Statement



U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management

Volume II - Appendices

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* VOLUME II *
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APPENDICES

TO THE

VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

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Prepared by:

Commonwealth of Virginia's Council on the Environment
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U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
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APPENDIX I-1

LIST OF ACTIVITIES WHICH CONTRIBUTE TO THE MANAGEMENT OF VIRGINIA'S COASTAL RESOURCES

LIST OF ACTIVITIES WHICH CONTRIBUTE TO THE MANAGEMENT OF VIRGINIA'S COASTAL RESOURCES

1.	Localities	Local comprehensive and land use planning. Subdivision, site planning, zoning and other land use regulations including erosion and sediment controls. Protection of wetlands and coastal primary sand dunes by local wetlands boards.
2.	Water Control Board	Regulation of pollutant discharges to State waters (National Pollutant Discharge Elimination System Permit program and State No-Discharge Certification Program).
3.	Water Control Board	"401" Certification of Water Quality for federally permitted dredging and other projects.
4.	Marine Resources Commission	Protection of wetlands through review of local Wetlands Boards' decisions and administration of state wetlands act.
5.	Marine Resources Commission	Custodianship of state owned subaqueous bottomland. Subaqueous Permits.
6.	Division of Soil and Water Conservation	Administration of the State Erosion and Sediment Control Laws.
7.	Department of Housing and Community Development	Administration of Uniform Statewide Building Code.
8.	Department of Health	Approval of non-municipal wastewater disposal systems (septic systems, etc.)
9.	Water Control Board, Department of Health	Municipal wastewater disposal system approval.
10.	Department of Health	Regulation of solid waste disposal sites and operations.

11.	Marine Resources Commission	Marina construction permits.
12.	Department of Health	Marina sanitation plan approval - prior to MRC permit.
13.	Department of Health	Permits for residential and transient trailer parks.
14.	Department of Conservation and Historic Resources	Regulation of surface mining other than coal.
15.	Department of Agriculture and Consumer Services	Pesticide regulatory program.
16.	Air Pollution Control Board	Permit approval to ensure compliance with air quality standards for direct and indirect pollution sources.
17.	Marine Resources Commission	Fisheries Management.
18.	Department of Health	Shellfish sanitation program which regulates taking of shellfish from condemned waters.
19.	Marine Resources Commission	Enforcement of Health Department shellfish condemnation area regulations.
20.	Department of Health, Department of Agriculture and Consumer Services	Inspection and regulation of seafood processing facilities.
21.	Department of Conservation and Historic Resources	State parks acquisition, development and management.
22.	Department of Conservation	Natural Areas System.
23.	Commission of Game and Inland Fisheries	Acquisition and development of public boat landings.
24.	Commission of Game and Inland Fisheries	Ownership and management of wildlife management areas and fishing lakes.
25.	Virginia Outdoors Foundation, Division of Historic Landmarks	Scenic easement program.

26.	Division of Parks and Recreation	Funding of projects which acquire and develop lands for recreational and open space.
27.	Department of Highways and Transportation	Recreational and industrial road access program.
28.	Virginia Port Authority	Construction and operation of port facilities.
29.	Water Control Board	Grants for the construction of municipal wastewater treatment facilities.
30.	Water Control Board	Investigation of fish kills, oil spills and pollution complaints.
31.	Water Control Board	Emergency response for cleanup of oil and hazardous spills.
32.	Department of Emergency Services	Coordination of emergency weather warnings and the evacuation of high hazard areas.
33.	Department of Health	Environmental health complaint investigation and abatement.
34.	Department of Health	Shellfish sanitation - identification and abatement of pollution problems.
35.	Marine Resources Commission	Shellfish conservation and repletion.
36.	Marine Resources Commission, other State and Federal agencies	Coordinated permitting of minor shoreline alteration projects.
37.	Council on the Environment	Environmental impact review, evaluation, coordination and comment.
38.	Council on the Environment	Project coordination liaison and optional multiple permit services.
39.	Water Control Board	Flood insurance program coordination.

40.	Department of Economic Development	Industrial promotion and site location services.
41.	Department of Conservation and Historic Resources	Promotion of tourism.
42.	Department of Conservation and Historic Resources	Promotion of saltwater fishing.
43.	Marine Resources Commission	Artificial reef development.
44.	Virginia Institute of Marine Science	Fisheries conservation, development and replenishment.
45.	Water Control Board	Water quality and water resource planning.
46.	Division of Parks and Recreation	State Comprehensive Outdoor Recreation Plan development.
47.	Planning District Commissions	Regional comprehensive and land use planning.
48.	Air Pollution Control Board	"State Implementation Plan" for the achievement of the National Ambient Air Quality Standards.
49.	Virginia Port Authority	Port Development Plan.
50.	Virginia Institute of Marine Science	Tidal Marsh Inventories.
51.	Virginia Institute of Marine Science	Shoreline Situation Reports. Survey of shoreline conditions.
52.	Water Control Board	Floodplain studies.
53.	Department of Emergency Services	Assistance to coastal localities for storm hazard planning.
54.	Department of Conservation and Historic Resources	Topographic, geologic and land use mapping and mineral resources program.
55.	Marine Resources Commission	Surveys and records of public and private oyster rocks, condemned areas.

56.	Division of Soil and Water Conservation	Natural resource inventories (through districts).
57.	Division of Soil and Water Conservation	Soil survey and mapping.
58.	Department of Health	Soil and other studies to ascertain land suitability for septic and other "no discharge" sewage disposal systems.
59.	Department of Agriculture Consumer Services	Technical assistance in management of animal waste and land application of sewage sludge.
60.	Division of Historic Landmarks	Virginia Landmarks Register, Survey and mapping of historic landmarks.
61.	Water Control Board	Development of "Best Management Practices Handbooks".
62.	Department of Housing and Community Development	Local and regional planning assistance.
63.	Division of Parks and Recreation	Assistance in local and regional recreation and open space planning.
64.	Virginia Institute of Marine Science	Environmental assessment of proposed projects in navigable waters or adjacent wetlands.
65.	Virginia Institute of Marine Science	Technical assistance to state and local officials and landowners on shoreline and wetlands alternations.
66.	Virginia Institute of Marine Science	Seafood and commercial and sportfishing studies.
67.	Virginia Institute of Marine Science	Water pollution studies.
68.	Virginia Institute of Marine Science	Hydrographic and biological studies of Chesapeake Bay, tributaries and contiguous shelf waters.

69.	Virginia Institute of Marine Science	Marine Advisory Services.
70.	Virginia Institute of Marine Science	Educational, informational and technical assistance programs.
71.	Department of Agriculture and Consumer Services	Rural resources services program.
72.	Department of Conservation and Historic Resources	Forestry and non-forestry conservation and natural resource management (through districts).
73.	Division of Soil and Water Conservation	Agricultural and non-agricultural conservation and natural resource management (through districts).
74.	Division of Soil and Water Conservation	Educational, informational and technical assistance programs (through districts).
75.	Public Beach Commission	Review financial need of localities for beach protection and allocate state funds.
76.	Division of Soil and Water Conservation	Shoreline erosion advisory service with staff in Tidewater area.
77.	Virginia Institute of Marine Science	Provide assistance to Division of Soil and Water Conservation and Public Beach Commission for research, training and technical advice.
78.	Marine Resources Commission	Protection of coastal primary sand dunes by Marine Resources Commission in any area not covered by a local wetlands board.
79.	Chesapeake Bay Commission	Analysis of Bay management issues and development of appropriate interstate policies and agreements.
80.	Commission of Game and Inland Fisheries	Protection and management of non-marine fauna and their habitats.

81.	Commission of Game and Inland Fisheries	Boating law enforcement (shared with Marine Resources Commission and Coast Guard).
82.	Council on the Environment	Coordinate state involvement in OCS activities.
83.	Division of Consolidated Laboratories	Technical and analytical support for state agencies.
84.	Department of Health	Classification of shellfish waters.
85.	Department of Health	Heavy metals surveillance.
86.	Department of Health	Pesticide surveillance.
87.	Department of Health	Kepone surveillance.
88.	Department of Health	Radiological surveillance.
89.	Department of Health	Pollution investigations.
90.	Department of Health	Interagency memorandum of understand.
91.	Department of Health	Coal collier monitoring.
92.	Department of Health	Hydrographic surveys.
93.	Department of Health	Depuration of shellfish.
94.	Department of Health	Animal pollution surveillance.
95.	Department of Highways and Transportation	Wetlands mitigation/ enhancement.
96.	Virginia State Fire Services Commission	Marine fire protection evaluation and planning.

APPENDIX II-1

FEDERAL HOLDINGS IN VIRGINIA'S CRM MANAGEMENT AREA BY PLANNING DISTRICTS AND A MAP OF VIRGINIA'S PLANNING DISTRICTS

APPENDIX II

PLANNING DISTRICT 8

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Marine Corps Air Station	310.26		Prince William	Navy
Air Force Technical Application Center		79.59	Fairfax	Army
Alexandria U.S.O. Site	.41		Alexandria City	Army
Army Map Service Herndon Site	29.31	31.69	Fairfax	Army
Arlington Hall Station	86.57		Fairfax	Army
Arlington National Cemetary	509.84	1.51	Arlington	Army
Cameron Station	169.62		Alexandria City	Army
Fort Belvoir	9,015.75	206.53	Fairfax	Army
Fort Meyer	355.71		Arlington	Army
Fort Ritchie Tyson Corner Site	2.69		Fairfax	Army
Manassas Communication Facility Annex 2	.50	7.80	Prince William	Army
Pentagon Building Site, Va	259.00		Arlington	Army
Quantico Microwave Site		.60	Prince William	Army
Army Reserce Center Alexandria	7.76		Alexandria	Army
Woodbridge Housing Site	7.00		Prince William	Army
	73,846.20	344.12		

APPENDIX II

PLANNING DISTRICT 8

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Barracks K	2.40		Alexandria	Fed'l. Hwy. Admin.
Naval Reserve Center	1.24		Alexandria	Navy
Henderson Hall Marine Headquarters	21.40		Arlington	Navy
Navy Department Service Center	17.10		Arlington	Navy
Quarters K	16.40		Arlington	Navy
Marine Corps Development and Education Center, Quantico	25,189.26		Prince William	Navy

APPENDIX II

PLANNING DISTRICT 16

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Brooks, Virginia VORTAC	22.50		Stafford	Federal Aviation Admin.
Naval Surface Weapons Center, Dahlgren	4,318.66		King George	Navy
Stoney Point		.02	King George	Navy
Fort A. P. Hill	77,027.82	111.39	Caroline	Army
Fredericksburg and Spotsylvania National Military Park	5,886.00		Fredericksburg Spotsylvania	National Park
Federal Minerals/Non-federal Land		303.17	Caroline	BLM
Federal Minerals/Non-federal Land		96.00	Spotsylvania	BLM
Marine Corps Development and Education Command, Quantico	32,830.00			
	120,084.98	510.58		

APPENDIX II

PLANNING DISTRICT 15

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Byrd Field		137.00	Henrico	Air Force
Richmond National Battlefield Park	746.56		Henrico	National Park
Presquile	1,329.00		Chesterfield	Fish & Wildlife
Harrison Lake	445.00		Charles City	Fish & Wildlife
Dancing Point Shoal Channel Rear Range Light	.80		Charles City	Coast Guard
Naval and Marine Reserve Training Center, Navy Recruiting, Richmond	22.0		City of Richmond	Navy
James River Channel (Real Estate) Improvements		1,035.95 489.68	Chesterfield Henrico	Army
USARC - DGSC, Richmond	7.42		Henrico	Army
Arlington Road Photographic Storage Facility	4.74	.29	Henrico	Army
Army Reserve Center, Richmond	6.0		Chesterfield	Army
Defense General Supply Center	639.06	6.69	Chesterfield	Army
Byrd Field National Guard Site	160.0	.93	Henrico	Army
Army Reserve Center Sherwood Ave., Richmond		4.28	Henrico	Army
Appomattox River Diversion Channel	118.89	.74	Chesterfield	Army
	3,471.43	1,766.79		

APPENDIX II

PLANNING DISTRICT 17

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
George Washington Birthplace National Monument	393.68		Westmoreland	National Park
Bluff Point #7	.34		Westmoreland	Navy
Colonial Beach #9	.20		Westmoreland	Navy
Colonial Beach #11		.03	Westmoreland	Navy
Colonial Beach #13		.06	Westmoreland	Navy
Paynes Point #15		.34	Westmoreland	Navy
Wakefield #17		.01	Westmoreland	Navy
Muses Beach #21		.87	Westmoreland	Navy
Stafford Hall #27		.07	Westmoreland	Navy
Nomini Cliffs #29		.01	Westmoreland	Navy
King Copsoco #37A		.26	Westmoreland	Navy
Ragged Point #45		.41	Westmoreland	Navy
Green Vale Creek (Real Estate)		.25	Lancaster	Army
Smith Point Light	5.00		Northumberland	Coast Guard
Windmill Point Light	5.00		Lancaster	Coast Guard
	404.22	2.29		

APPENDIX II

PLANNING DISTRICT 18

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Milford Haven Station	8.40		Mathews	Coast Guard
Hoskins Creek Range Rear Light	.03		Essex	Coast Guard
Sting Ray Point Light	5.00		Middlesex	Coast Guard
Pages Rock Light	5.00		Gloucester	Coast Guard
York River Channel Light #48	5.00		King & Queen	Coast Guard
Federal Minerals/Non-federal Land		558.98	King & Queen	BLM
Federal Minerals/Non-federal Land		373.90	Prince William	BLM
	23.43	932.88		

APPENDIX II

PLANNING DISTRICT 19

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Petersburg National Battlefield	2,731.00		Prince George	National Park Service
Jordan Point Range Rear Light	.10		Prince George	Coast Guard
Fort Lee	5,430.22	216.76	Prince George	Army
	8,161.32	216.76		

APPENDIX II

PLANNING DISTRICT 20

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Back Bay	4,589.0		Virginia Beach	Fish & Wildlife
Great Dismal Swamp	53,587.00		Chesapeake	Fish & Wildlife
Mackay Island	842.0		Virginia Beach	Fish & Wildlife
Hansemond	208.0		Suffolk	Fish & Wildlife
Atlantic Marine Center	1.3		Norfolk	Dept. of Commerce
Nansemond River Light	5.0		Suffolk	Coast Guard
Cape Henry Light Station	4.7		Norfolk	Coast Guard
Little Creek Station	1.5		Norfolk	Coast Guard
Craney Island Day Beacon	5.0		Norfolk	Coast Guard
Support Center Portsmouth	187.3		Portsmouth	Coast Guard
Virginia Beach Station	1.2		Virginia Beach	Coast Guard
Portsmouth Flag Quarters	.3		Portsmouth	Coast Guard
Portsmouth Communication Station	222.5		Portsmouth	Coast Guard
Sewells Point Area	4,528.45		Norfolk	Navy
West Norfolk Degaussing Facility		.14	Norfolk	Navy
Shore Patrol Headquarters	1.38		Norfolk	Navy

APPENDIX II

PLANNING DISTRICT 20

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
FLTCOMBATDIRSYSTRACENLANT	1,036.15		Virginia Beach	Navy
Nortwest Security Group Activity	3,186.22		Chesapeake	Navy
NAVCOMSTA Driver	605.23		Suffolk	Navy
Gallop Farm Housing Site	87.99		Virginia Beach	Navy
Norfolk District Engineer Site	20.05		Norfolk	Army
Black Water River and Chowan River Channel Improvements		60.11	Suffolk	Army
Intra-Coastal Water - Norfolk	256.5		Virginia Beach	Army
to N.C. and Dismal Swamp Canal	2,804.40	34.52	Chesapeake	
Lynnhaven Inlet Bay (Real Estate)		61.56	Virginia Beach	Army
Craney Island Disposal Site	3,439.02		Portsmouth	Army
Tylers Beach (Real Estate)		4.85	Isle of Wight	Army
Fort Storey	1,433.65	17.40	Virginia Beach	Army
Army Reserve Center (Suffolk)	9.95	.04	Suffolk	Army
Army Reserve Center Norfolk	1.72		Norfolk	Army
	90,831.51	178.62		

APPENDIX II

PLANNING DISTRICT 20

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Navy Housing Area, Hewitt Farms	73.74		Norfolk	Navy
Naval Ship Engineering Center	.05		Norfolk	Navy
Human Resource Management Center	.05		Norfolk	Navy
NAVYSUPCEN Craney Island Fuel Section	873.67		Portsmouth	Navy
Regional Medical Center	114.37		Portsmouth	Navy
Norfolk Naval Shipyard	806.2		Portsmouth	Navy
Naval Ammunition Depot, St. Juliens	489.47		Portsmouth	Navy
Naval Electronics Systems Engineering Center	2.4		Portsmouth	Navy
Antenna Test Facility	2.0		Virginia Beach	Navy
Naval Amphibious Base, Little Creek	2,219.44		Norfolk	Navy
Amphibious Base Landing Beach Area, Camp Pendleton	390.19		Virginia Beach	Navy
Explosive Ordnance Disposal Group	30.0		Virginia Beach	Navy
Virginia Beach Officers Club	1.72		Virginia Beach	Navy
Naval Air Station, Oceana	5,455.05		Virginia Beach	Navy
Naval Auxiliary Landing Field	3,306.65		Chesapeake	Navy

APPENDIX II

PLANNING DISTRICT 21

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Naval Ordnance Lab Test Facility	1.28		Hampton	Navy
Camp Peary	10,298.99		Williamsburg, York, James City	Navy
Navy Reserve Center, Newport News	5.03		Newport News	Navy
Deep Creek (Real Estate)	8.5		Newport News	Army
Big Bethel Military Reservation	460.74	46.53	York, Hampton Newport News	Army
Fort Eustis	8,382.06	.05	Newport News	Army
Fort Monroe	568.54	5.50	Hampton	Army
Army Reserve Center, Hampton	20.78		Hampton	Army
Army Reserve Center, Newport News	5.24		Newport News	Army
	42,776.42	325.48		

APPENDIX II

PLANNING DISTRICT 21

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Langley Missile Site	86.4		Hampton	Air Force
Langley AFB	2,837.14	269.44	Hampton	Air Force
Langley Family Housing Annex	286.51	3.67	York	Air Force
Morrison Radio Beacon Annex	.44	.29	Hampton	Air Force
Colonial National Historical Park	943.0		James City, York	National Park
Jamestown National Historic Site	1,477.0		James City	National Park
Plum Tree Island	3,276.0		York	Fish & Wildlife
Langley Reserach Center	474.0		Hampton	NASA
NASA Space Radiations Effects Lab	110.0		Newport News	NASA
Area East of Langley AF Runway	23.00		Hampton	NASA
Tue Marshes Light	9.00		York	Coast Guard
Yorktown Reserve Training Center	152.00		York	Coast Guard
Deepwater Shoal Light	5.00		Newport News	Coast Guard
Old Point Comfort Light Station	1.80		Hampton	Coast Guard
Newport News Middle Ground Light	5.00		Newport News	Coast Guard
Naval Weapons Station	10,990.99		James City, York	Navy
NAVSUPCEN Yorktown Fuel Section	110.02		York	Navy
NAVSUPCEN Cheatham Annex	2,358.49		York	Navy
Copeland Park	8.0		Newport News	Navy

Appendix II

PLANNING DISTRICT 22

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Cape Charles Communication Facility	78.1		Northampton	Air Force
Cape Charles Facility Annex	23.0		Northampton	Air Force
Chincoteague Nat. Wildlife Refuge	9,039.0		Accomack	Fish & Wildlife
Fisherman's Island	1,025.0		Northampton	Fish & Wildlife
Wallops Island	3,000.0		Accomack	Fish & Wildlife
Wallops Main Base, Marsh Area	397.0		Accomack	Fish & Wildlife
Marine Fisheries Service	5.6		Accomack	Fish & Wildlife
Wallops Main Base	1,833.0		Accomack	NASA
Wallops Island	3,084.0		Accomack	NASA
Wallops Mainland	108.0		Accomack	NASA
Marsh land (Wallops)	1,140.0		Accomack	NASA
Cape Charles City Daybeacon	5.0		Northampton	Coast Guard
Cape Charles Family Housing	2.0		Northampton	Coast Guard
Cape Charles Station	2.2		Northampton	Coast Guard
Cape Charles Lighthouse	.8		Northampton	Coast Guard
Old Plantation Flats Light	5.0		Northampton	Coast Guard
Chincoteague Station	3.5		Accomack	Coast Guard

Appendix II

PLANNING DISTRICT 22

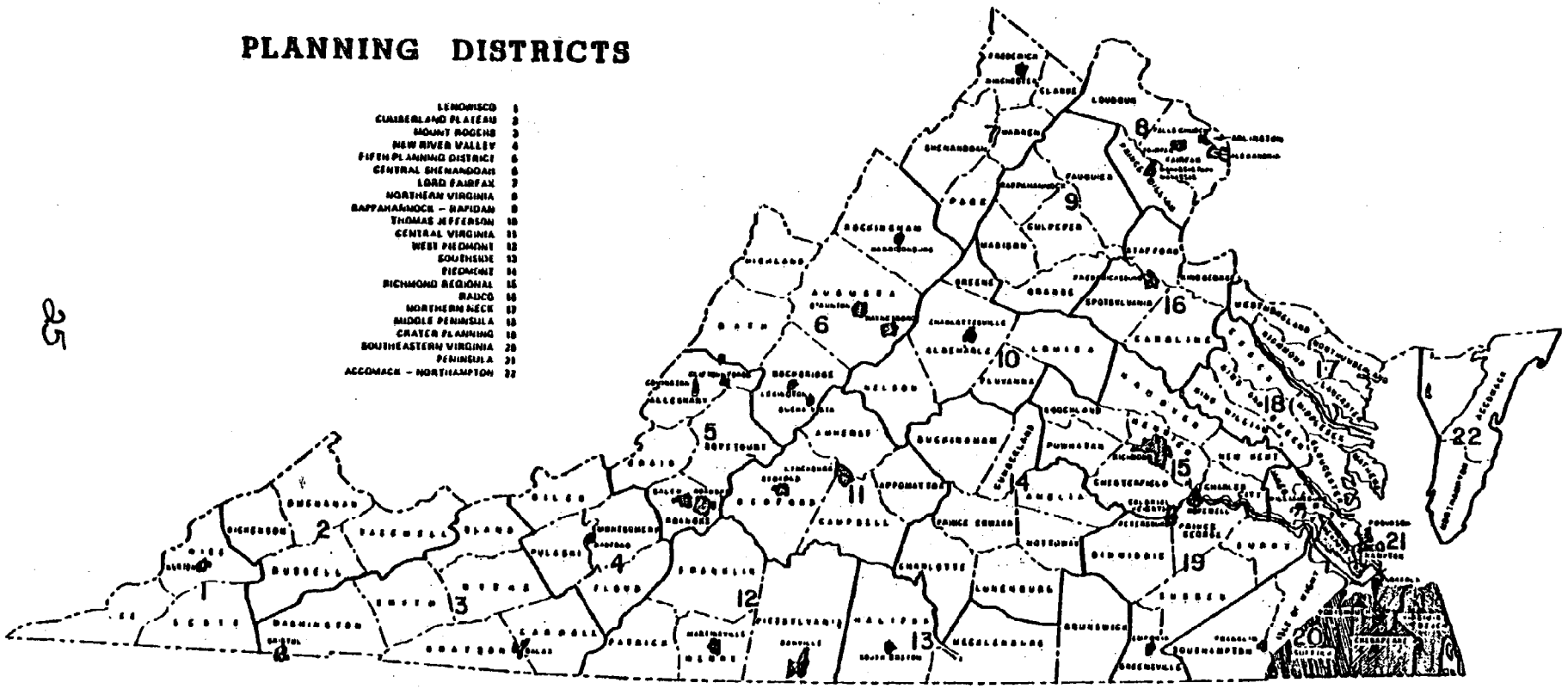
INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Assateague Light	.2		Accomack	Coast Guard
Parramore Beach Station	6.8		Accomack	Coast Guard
Tangier Sound Light	5.0		Accomack	Coast Guard
Cape Charles City Range Rear Light	.13		Northampton	Coast Guard
Cape Charles VORTAC		31.31	Northampton	FAA
Harbor Defense Unit, Fisherman's Isld.	25.0		Northampton	Navy
Tangier North Site		23.98	Accomack	Navy
Tangier South Site		6.34	Accomack	Navy
Onancock Municipal Dock		.2	Accomack	Navy
Chincoteague Bay Harbor Improvement		4.48	Accomack	Army
Chincoteague Bay Harbon (Real Estate)		6.32	Accomack	Army
Cape Charles City Harbor (Real Estate)		4.4	Accomack	Army
Porker Creek (Real Estate)		.63	Accomack	Army
Quinby Creek Channel Improvement (Real Estate)		6.0	Accomack	Army
Star Lings Creek (Real Estate)		9.36	Accomack	Army
Tangier Creek (Real Estate)		52.57	Accomack	Army
	19,884.15	160.14		

APPENDIX II

FEDERAL LAND IN TIDEWATER BY SITE

INSTALLATION	OWNED	LESSER INT.	LOCALITY	AGENCY
Thimble Shoals Light	5.0		Chesapeake Bay	Coast Guard
Wolf Trap Light	5.0		Chesapeake Bay	Coast Guard
York Spit Light	5.0		Chesapeake Bay	Coast Guard
	15.0			

PLANNING DISTRICTS



APPENDIX III-1

LEGAL AUTHORITY TO MANAGE VIRGINIA'S PROPOSED COASTAL RESOURCES PROGRAM

Gerald L. Baliles
Attorney General

William G. Broaddus
Chief Deputy Attorney General

COMMONWEALTH of VIRGINIA

Office of the Attorney General

Donald C. J. Gehring
Deputy Attorney General
Criminal Law Enforcement Division

Maston T. Jacks
Deputy Attorney General
Human & Natural Resources Division

Elizabeth B. Lacy
Deputy Attorney General
Judicial Affairs Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

Karl E. Bren
Director of Administration

July 16, 1985

Mr. Keith J. Buttleman
Administrator, Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Re: Legal Authority to Manage Virginia's Proposed Coastal Resources Management Program

Dear Keith:

You have asked that I evaluate the enforceability of Virginia's coastal policies, and of the administrative procedures necessary to network existing coastal policy enforcement authorities to carry out the proposed Virginia Coastal Resources Management Program. This program designates certain uses of Virginia's coastal resources for coordinated management under authority contained in existing law. The regulations needed for the administration of such statutes are already in place. The first part of this letter will identify the Program's enforceable coastal policies and the existing legal authority to enforce those policies. The second part will address the networking of these authorities to carry out the proposed Virginia Coastal Resources Management Program. This letter reflects may own views and does not constitute an official opinion of the Attorney General.

The identified means of enforcing the State's coastal policies provide for effective State control. In each case enforcement by injunction is authorized. In each case the policy and usually the execution is done at the State level, or subject to State review. In many cases there are criminal penalties for violation of the law, regulations, and permit or plan conditions.

VIRGINIA'S ENFORCEABLE COASTAL POLICIES

The uses subject to management identified by Virginia's Coastal Resources Management Program are commercial fishing; recreational fishing in freshwater tidal rivers; encroachments on subaqueous lands; encroachments on wetlands; encroachments on sand dunes; land disturbing activities needing erosion and sediment control; actual or potential wastewater discharges; control

of septic and other on-site domestic waste systems; and air pollution control. The enforceable policies for each use are discussed below.

1. Commercial Fishing

Title 28.1 of the Code of Virginia gives the Marine Resources Commission jurisdiction over all commercial fishing up to the fall line of all tidal rivers and streams. Section 28.1-23 sets the policy which is "to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the State ...," and it gives the Marine Resources Commission authority to make regulations including regulations as to the taking of seafood. That same section makes the violation of any such regulation a misdemeanor. See § 7 below for the State Water Control Board's authority to protect Virginia's water quality standards for all beneficial uses which specifically include protection of all aquatic life.

2. Recreational Fishing in Tidal Freshwater Rivers

Section 29-13 sets forth the State's policy of protecting and preserving all "fish in the inland waters ... which ... shall be construed to mean and to include ... the brackish and freshwater streams, creeks, bays, including Back Bay, inlets and ponds in the tidewater counties," and it gives the Commission of Game and Inland Fisheries the power to enforce all laws to accomplish such purposes. Sections 29-125 and 29-127 provide authority to adopt regulations to control fishing; § 29-129 provides that it shall be a misdemeanor to violate a regulation of the Game Commission; and § 29-51 requires fishing licenses. Section 29-129.1 provides the power "to prescribe [by regulation] the seasons and ... limits for fishing ... or otherwise taking fish...." Section 29-130 provides authority to close or shorten a season when extreme weather threatens the birds, animals or fish. Section 29-14 directs the Commission to "prosecute all persons who violate" the fish and game laws.

3. Encroachment on Subaqueous Lands

Section 62.1-1 states the Commonwealth's subaqueous lands policy:

> All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of this Commonwealth, and not conveyed by special grant or compact according to law, shall continue and remain the property of the

> Commonwealth of Virginia, and may be used as a common by all the people of the State for the purpose of fishing and fowling, and of taking and catching oysters and other shellfish, subject to the provisions of Title 28.1, and any future laws that may be passed by the General Assembly.

Section 62.1-3 makes it unlawful "for anyone to build, dump or otherwise trespass upon or over or encroach upon or take or use any materials from the beds of the bays and oceans, rivers, streams, creeks, which are the property of the Commonwealth unless such act is pursuant to statutory authority or a permit from the Marine Resources Commission." It gives the Marine Resources Commission authority to issue permits for all reasonable uses of state-owned bottom lands which are not statutorily permitted. Such permits shall be in writing and shall specify such conditions as the Commission deems appropriate. It directs that the Commission be guided by § 1 of Article XI of the Virginia Constitution and

> consider, among other things, the effect of the proposed project upon other reasonable and permissible uses of State waters and state-owned lands, its effect upon the marine and fisheries resources of the Commonwealth, its effect upon the wetlands of the Commonwealth, except when its effect upon said wetlands has been or will be determined under the provisions of Chapter 2.1 (§ 62.1-13.1 et seq.) of this title and its effect upon adjacent or nearby properties, its anticipated public and private benefits, and, in addition thereto, the Commission shall give due consideration to standards of water quality as established by the State Water Control Board.
>
> No permit for a marina or boat yard for commercial use shall be granted unless the owner or other applicant prior to issue presents a plan for sewage treatment or disposal facilities which is approved by the State Department of Health. The Marine Resources Commission shall consult with any State agency, including the Virginia Institute of Marine Science, the Water Control Board, the State Department of Highways and Transportation and the State Corporation Commission whenever the decision

> of the Marine Resources Commission on an application for a permit relates to or affects the particular concerns or activities of other State agencies....

Section 62.1-3.1 gives the Marine Resources Commission the authority to go to court to seek an injunction against any act which violates § 62.1-3 and gives the court authority to direct the guilty person or the Marine Resources Commission, "at the cost of the person found to have acted unlawfully, to remove, tear down or otherwise take such steps as are necessary to protect and preserve the subject property of the Commonwealth."

4. Encroachments on Wetlands

Section 62.1-13.1 declares that Virginia's public policy is "to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation." The Virginia Wetlands Act, § 62.1-13.1 et seq., authorizes local governments to set up a wetlands board to issue permits for wetlands development, § 62.1-13.6, and to adopt the wetlands zoning ordinance set forth in § 62.1-13.5. Section 62.1-13.3 provides the following standards for the use and development of wetlands:

> (1) Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed;
>
> (2) Development in Tidewater Virginia, to the maximum extent possible, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed before July 1, 1972, in nonvegetated wetlands as described herein which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia apart from the wetlands."

Sections 62.1-13.5(4) and 62.1-13.9 prohibit the use or development of any wetland without a permit except for those uses specified in § 62.1-13.5(3).

If a locality does not elect to set up a wetlands board, permits for wetlands development must be obtained from the Marine Resources Commission. § 62.1-13.9. Under §§ 62.1-13.10 and 62.1-13.11(2) the Commissioner reviews all decisions of local

wetlands boards and notifies the Marine Resources Commission of any decision which in his opinion should be reviewed because he feels it does not follow the policy, standards and guidelines. Section 62.1-13.13 empowers the Commission to modify, remand or reverse the decision of a local wetlands board.

Section 62.1-13.16 gives the Commission "the power to prosecute all violations of any order, rule or regulation of the Commission or of a wetlands board" or of the Wetlands Act. Wetlands boards may prosecute violations of their orders or of the wetlands zoning ordinance. Section 62.1-13.18 makes the violation of "any order, rule or regulation of the Commission or of a wetlands board ... [or of] any provision of this chapter or of a wetlands zoning ordinance ... or any provision of a permit granted by a wetlands board or the Commission" a misdemeanor. Each day of violation following conviction is a separate offense. Section 62.1-13.18:1 provides injunctive relief for any act unlawful under the Wetlands Act.

5. Coastal Primary Sand Dunes

Section 62.1-13.21 declares Virginia's public policy:

> [I]n order to reasonably protect the public interest, promote public health, safety, the general welfare of the Commonwealth, protect private and public property from erosion and flooding and protect wildlife and the natural environment, it is declared to be the public policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features.

Section 62.1-13.23 provides that "[n]o permanent alteration of or construction upon any coastal primary sand dune shall take place which would: (i) impair the natural functions of the dune as described herein; (ii) physically alter the contour of the dunes; (iii) destroy vegetation growing thereon as defined herein unless the wetlands board, or in its absence the Commission, determines that there will be no significant adverse ecological impact, or that the granting of a permit hereunder is clearly necessary and consistent with the public interest considering all material factors."

Section 62.1-13.25(4) provides that "[a]ny person who desires to use or alter any coastal primary sand dune ... shall first file an application with the wetlands board...." Section 62.1-13.27 provides that the Sand Dune Act shall be enforced as provided in §§ 62.1-13.7 through 62.1-13.19 of the Wetlands Act. This gives the Marine Resources Commission the same power to modify, remand or reverse local sand dune decisions which it has with respect to wetlands decisions.

6. Land Disturbing Activities Needing Erosion and Sediment Control

The Erosion and Sediment Control Law, § 21-89.1 et seq., provides control over erosion and sedimentation caused by development. Section 21-89.2 sets forth the Commonwealth's policy of conserving and protecting the land, water, air and other natural resources of the Commonwealth. Section 21-89.4 provides that the Virginia Soil and Water Conservation Commission "shall establish minimum standards, guidelines and criteria for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any control program." Section 21-89.5 requires either the local Soil and Water Conservation District or the county, city or town, to adopt an erosion and sediment control program which is consistent with the state program and guidelines. Section 21-89.6 provides that except for State plans filed with the Commission and for agricultural operations, "no person may engage in any land-disturbing activity after the adoption of the conservation standards by the districts, counties, cities or towns until he has submitted to the district, county, city or town an erosion and sediment control plan for such land-disturbing activity and such plan has been reviewed and approved by the plan-approving authority."

Section 21-89.7 provides that "no agency authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may issue any such permits unless the applicant therefor submits with his application the approved erosion and sediment control plan or certification of such approved plan from the local plan-approving authority or from the Commission where appropriate, as well as certification that such plan will be followed." Provision is also made for requiring a reasonable performance bond.

Section 21-89.8 provides for the inspection of land-disturbing activities to ensure compliance with the erosion and sediment control plan. It provides that where the plan is not being complied with, the permittee shall be notified and if he fails to comply his permit is subject to revocation and he

becomes subject to the other penalties provided. To insure that land disturbing activities are controlled in accordance with the State program, § 21-89.11 provides that the Soil and Water Conservation Commission may sue in circuit court for an injunction against a violation or threatened violation under § 21-89.6 (having an approved plan before disturbing land) or § 21-89.8 (complying with the plan); that the Attorney General shall, upon request of the Soil and Water Conservation Commission, take appropriate legal action to enforce the provisions of the Erosion and Sediment Control Law; and that a violation of such sections is a misdemeanor, punishable by a fine up to $1,000 and/or 30 days imprisonment for each violation.

7. Actual or Potential Discharges of Waste Water Into State Waters

Section 62.1-44.2 provides that

> It is the policy of the Commonwealth of Virginia ... to: (1) protect existing high quality State waters and restore all other State waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them, (2) safeguard the clean waters of the State from pollution, (3) prevent any increase in pollution, (4) reduce existing pollution, and (5) promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

Section 62.1-44.15 gives the State Water Control Board (the Water Board) authority "to exercise general supervision and control over the quality ... of all state waters...." Section 62.1-44.3 broadly defines "state waters" to mean "all water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction...." Section 62.1-44.15(3)(a) gives the Water Board authority to set "such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter ... and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established."

Subsection 5 gives the Water Board authority "[t]o issue certificates for the discharge of sewage, industrial wastes and other wastes into or adjacent to or the alteration otherwise of the physical, chemical or biological properties of state waters under prescribed conditions and to revoke or amend such certificates." Section 62.1-44.16(1) provides that "[a]ny 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."

Pursuant to its authority the Water Board has adopted Regulation 6 which requires that all discharges to state waters must have a national pollution discharge elimination system (NPDES) permit. All other operations involving wastes which will not be discharged require a no-discharge certificate. Procedural Rule #2 sets forth the procedures to be followed in connection with securing a no-discharge certificate. Section 62.1-44.23 authorizes the Water Board to sue for an injunction against the violation of "any rule, regulation, order, water quality standard, or ... provision of any certificate issued by the Board or any provisions of the Water Control Law." Section 62.1-44.31 makes it unlawful not to comply with a Water Board special order, or to discharge sewage, industrial wastes or other wastes in violation of a certificate. Section 62.1-44.32 provides civil and criminal penalties for the violation of the Water Control Law or of a special final order of the Board, or a final court order.

Section 62.1-44.33 gives the Water Board power to adopt rules and regulations to control discharges from boats on all waters within the State, but such regulation must not be more restrictive than federal regulations unless needed to limit or avoid the closing of shellfish grounds. Violating such rules and regulations is a misdemeanor. Every law-enforcement officer of the State and its subdivisions has the authority to enforce such rules and regulations. Additional provisions control and prohibit the discharge of oil to state waters. Section 62.1-44.34:1 et seq.

8. Shoreline Sanitation Program

Section 32.1-2 gives the Commonwealth's policy to "provide a comprehensive program of ... environmental health services ... thereby improving the quality of life in the Commonwealth," and

directs the State Board of Health and the State Health Commissioner to provide a comprehensive program to protect the public health.

Unless shoreline domestic waste systems are properly supervised, they form a potential source of water pollution. Section 32.1-164 provides that the Board of Health

> shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment and disposal of sewage, all sewerage systems and treatment works as they affect the public health and welfare.... B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:
>
> ***
>
> 5. Standards specifying the minimum distance between sewerage systems or treatment works and: ...
>
> (c) Streams and rivers
> (d) Shellfish waters
> (e) Groundwaters
> (f) Areas and places of human habitation....
>
> ***
>
> 8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth
>
> 9. A requirement that such residences, buildings, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

Pursuant to its responsibilities, the Health Department administers a program to inspect the shoreline adjacent to shellfish growing waters to detect failing septic systems.

Section 32.1-165 provides that "[n]o county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent." Section 32.1-246 provides that the Board of Health "is empowered and directed to adopt and promulgate all necessary regulations establishing minimum requirements for adequate sewerage facilities at marinas and other places where boats are moored according to the number of boat slips and persons such marinas and places are designed to accommodate."

Section 32.1-12 provides that the Board of Health "may make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions therefrom as may be necessary to carry out" the laws it administers. Section 32.1-26 authorizes the Board to issue orders to require any person to comply with the laws and regulations it administers. Section 32.1-27 makes failure to comply with such orders or any regulation a misdemeanor. It also provides for relief by injunction, mandamus or other appropriate remedy, and provides a civil penalty not to exceed $10,000 for each violation.

9. Air Pollution Control.

Section 10-17.18(b) gives the Air Pollution Control Board "the power to formulate, adopt and promulgate, amend and repeal rules and regulations abating, controlling and prohibiting air pollution throughout the State or in such areas of the State as shall be affected thereby...." Section 10-17.10 defines "air pollution" to mean "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Section 10-17.18(d) gives the Board the power to "enter orders diminishing or abating the causes of air pollution and orders for the purpose of enforcement of its rules and regulations...; institute legal proceedings, including suits for injunctions for the enforcement of its orders, rules and regulations and the abatement and control of air pollution and for the enforcement of penalties, all in accordance with this chapter." Section 10-17.23 provides that "any owner violating, failing, neglecting or refusing to obey any rule, regulation or order of the Board may be compelled to obey the same and comply therewith by injunction, mandamus or other appropriate remedy." It also provides for a civil penalty not to exceed $25,000 for each violation, with each day of violation constituting a separate offense.

Pursuant to its authority, the State Air Pollution Control Board has adopted regulations to control air pollution which, among other things, meet the requirements of the Clean Air Act.

NETWORKING AND CONFLICT RESOLUTION

Each of the uses subject to management can be controlled by the State agencies identified. Can administrative procedures be developed which will network these authorities and provide the conflict resolution mechanisms called for by 44 C.F.R. 923.43(c)? The discussion above demonstrates that existing authorities can be used to implement the full range of policies and management purposes as required by § 923.43(c)(1). Paragraph (2) of subsection (c) requires that the State must bind each party exercising statutory authority which is part of the management program to conform with the policies and management techniques.

The policies are set forth in the statutes and regulations governing the various State agencies. What is needed is central coordination and a central statement of the Coastal Resources Management Program policies to provide a unified Coastal Resources Management Program. This can best be done through an executive order. This would establish a substantial amount of uniformity since the Governor appoints all of the State agency heads concerned with coastal resources except the Executive Director of the Commission of Game and Inland Fisheries. Those he appoints serve at his pleasure. Section 2.1-41.2. The members of the Commission of Game and Inland Fisheries elect their own executive director, but the Governor still has effective control because § 29-4 permits the Governor to remove a member from the Commission during his term. Section 2.1-43 authorizes the Governor to remove the members of any state board or commission for failure to carry out a lawful directive, and makes the Governor the sole judge of the sufficiency of the cause for removal.

In order to see that the General Assembly's intent to use and protect Virginia's Coastal Resources is properly carried out, the Governor will promulgate the Coastal Resources Management Program pursuant to his responsibility under § 2.1-41.1 "for the formulation and administration of the policies of the executive branch, including resolution of policy and administrative conflicts between and among agencies." Section 2.1-39.1 authorizes the Governor to delegate any of his powers to any cabinet secretary. The proposed Executive Order delegates authority to the Secretary of Commerce and Resources to resolve conflicts with and

disputes concerning the Coastal Resources Management Program. All agencies will have a right of appeal to the Governor.

I am attaching herewith a proposed form of Executive Order for your consideration. This order is to network the existing authorities and provide the conflict resolution mechanism called for.

With kindest regards, I remain

Sincerely,

Frederick S. Fisher

Frederick S. Fisher
Assistant Attorney General

63:53-c648

D R A F T
July 16, 1985

EXECUTIVE ORDER NO. _____

COASTAL RESOURCES MANAGEMENT PROGRAM

The General Assembly has enacted numerous statutes to protect the Commonwealth's abundant and varied coastal resources. These statutes establish the Commonwealth's coastal resources management policy, but they lack coordination. Each statute has a specific focus and is enforced by a specific agency. Each agency has its defined mission and goals, but too frequently they are unaware of other Commonwealth goals which are the responsibility of different agencies.

To insure that the Executive Branch carries out the Commonwealth's coastal resources management policy in full compliance with its letter and spirit as adopted by the General Assembly, I hereby establish the Virginia Coastal Resources Management Program:

DIRECTIVE:

By virtue of the authority vested in my by the Constitution of Virginia and the provisions of § 2.1-41.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct all state agencies to so carry out their legally established duties as to be consistent with and supportive of Virginia's Coastal Resources Management Program.

COASTAL RESOURCES POLICY:

The Commonwealth's coastal resources policy is set forth in various sections of the Code of Virginia. The following agencies are primarily responsible for implementing the enforceable policies of the program:

Marine Resources Commission
Commission of Game and Inland Fisheries
Soil and Water Conservation Commission in the Department of Conservation and Historic Resources
Water Control Board
Department of Health
Air Pollution Control Board
Council on the Environment

In addition, other agencies that may conduct activities which may affect coastal resources shall conduct such activities consistent with and supportive of Virginia's Coastal Resources Management Program. For purposes of this Program the Coastal Zone shall mean Tidewater Virginia as defined in § 62.1-13.2(d).

The following goals set forth the policy framework within which Virginia's network of regulatory and other programs will operate when coastal resources are involved:

Promotion of Economic Development

1. To promote the wise use of coastal resources for the economic benefit and employment of our citizens.

2. To protect and maintain existing uses of estuarine waters for shellfish propagation and marketing.

3. To encourage provision of commercial and industrial access to coastal waters where essential to desired economic activities.

4. To coordinate State planning processes for major projects so as to facilitate consideration of alternative locations for such facilities within the context of long-term development patterns and implications.

5. To improve or maintain productive fisheries.

6. To encourage exploration and production of outer continental shelf energy reserves.

7. To provide for the extraction of mineral resources in a manner consistent with proper environmental practices.

Prevention of Environmental Pollution and Protection of Public Health

8. To maintain, protect and improve the quality of coastal waters suitable for the propagation of aquatic life and recreation involving body contact.

9. To reduce non-point pollution in tidal streams, estuaries, embayments and coastal waters caused by inappropriate land uses and inadequate land management practices.

10. To reduce the potential for damage to coastal resources from toxic and other hazardous materials through effective site selection and planning as well as improved containment and cleanup programs.

11. To prevent significant deterioration of air quality.

12. To protect the public health from contaminated seafood.

Prevention of Damage to Natural Resource Base

13. To protect ecologically significant tidal marshes from despoliation or destruction.

14. To minimize damage to the productivity and diversity of the marine environment resulting from alteration of subaqueous lands and aquatic vegetation.

15. To minimize damage to the productivity and diversity of the marine environment resulting from the disruption of finfish and shellfish population balances.

16. To reduce the adverse effects of sedimentation on productive marine systems.

Protection of Public and Private Investment

17. To conserve coastal sand dune systems.

18. To reduce or prevent losses of property, tax base and public facilities caused by shorefront erosion.

19. To minimize dangers to life and property from coastal flooding and storms.

Promotion of Public Recreation Opportunities

20. To provide and increase public recreational access to coastal waters and shorefront lands.

Promotion of Efficient Government Operation

21. To provide a shoreline permitting procedure which assures both adequate review and mitigation of probable impacts as well as timely response to applicants, administered at the local level wherever possible.

Provision of Technical Assistance and Information

22. To provide state and local governing officials and private citizens with technical advice necessary to make wise decisions regarding uses of and impacts on coastal resources.

23. To conduct continuing educational programs in Coastal Resources Management for local and state officials.

24. To maintain and improve' base data, maps and photo-imagery supportive of decision-makers' needs.

All the agencies listed above, and all other state agencies, shall carry out their assigned duties in the manner most consistent with the Commonwealth's coastal resources goals and policies.

ENFORCEMENT

The staff of the Council on the Environment shall monitor all state actions which could affect coastal resources. Where conflicts with the Coastal Resources Management Program appear,

the Council's staff will advise the Secretary of Commerce and Resources. All officials and agencies having knowledge of any known or proposed conflict between any part of the Coastal Resources Management Program and any action or proposed action or failure to act of any state agency shall report such conflict or proposed conflict to the Secretary of Commerce and Resources through the Council on the Environment. The Secretary of Commerce and Resources shall resolve all conflicts between agency decisions and the provisions of the Coastal Resources Management Program by insuring that the agency in question carries out its statutory duties in the way which is most in harmony with the Coastal Resources Management Program. Any state agency may appeal any decision made by the Secretary of Commerce and Resources to the Governor.

EFFECTIVE DATE

This Executive Order is effective immediately and will remain in full force and effect until amended or rescinded by further Executive Order.

Given under my hand and the Seal of the Commonwealth of Virginia this _____ day of _____, 1985.

_____
GOVERNOR

Attest:

_____
SECRETARY OF THE COMMONWEALTH

APPENDIX III-2

Laws of Virginia Relating to the Coastal Resources of the Commonwealth

Authority of Director of Conservation and Historic Resources to Protect State Parks

§ 10-9. Other officers, agents and employees. — The Director may employ or authorize the employment of such other officers, agents and employees as may be needed, in the exercise of the rights, powers and duties by law conferred or imposed upon him or upon the Board, or otherwise by law placed in the Department or any division thereof, and in order to effect a proper organization and carry on the work of the Department. The duties and titles of such officers, agents and employees may be fixed or authorized to be fixed by the Director, and they shall receive such compensation as may be provided in accordance with law for the purpose. Proper bonds shall be required of all such officers, agents and employees who shall handle any of the funds which may come into the custody or control of the Department. (1926, p. 308; Michie Code 1942, § 585(39); R. P. 1948, § 10-9.)

Air Pollution Control

§ 10-17.9:1. Public policy. — It is declared to be the public policy of the Commonwealth, and the purpose of this chapter, to achieve and maintain such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property, will foster the comfort and convenience of its people and their enjoyment of life and property, and will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions. (1970, c. 469.)

§ 10-17.10. Definitions. — The following words, for the purposes of this chapter, shall have the following meanings:

(a) *"Board"* means the State Air Pollution Control Board, sometimes hereinafter referred to as "Board" or "State Board."

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

(c) *"Owner"* as used in this chapter shall have no connotation other than that customarily assigned to the term "person," but shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.

(d) *"Special order"* means a special order issued under § 10-17.13:1.

§ 10-17.17. Inspections, investigations, etc. — The Board shall make, or cause to be made, such inspections, conduct such investigations and do such other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of the appropriations, study grants, funds, or personnel which are, or become, available from any source for the purposes of this chapter.

§ 10-17.18. Further powers and duties of Board. — (a) The Board at all times shall have the power to control and regulate its internal affairs; initiate and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement and control of all sources of air pollution in the Commonwealth; advise, consult and cooperate with agencies of the United States, and all agencies of the Commonwealth, political subdivisions, private industries and any other affected groups in furtherance of the purposes of this chapter.

(a1) The Board may adopt emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles; provided that any such emissions standards shall have effect only in Arlington County, Fairfax County, Prince William County, city of Alexandria, city of Fairfax, city of Falls Church, city of Manassas, city of Manassas Park, city of Richmond, Henrico County, and Chesterfield County and shall have no force or effect in any other locality in Virginia.

(b) The Board, after having made an intensive and comprehensive study of air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to formulate, adopt and promulgate, amend and repeal rules and regulations abating, controlling and prohibiting air pollution throughout the Commonwealth or in such areas of the Commonwealth as shall be affected thereby. No such rule or regulation and no such amendment or repeal shall be adopted, so as to prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance regulating such burning in all or a part of said county, city or town, nor shall any other rule or regulation and no such amendment shall be adopted except after public hearing to be held after thirty days' prior notice thereof by public advertisement of the date, time and place of such hearing, at which opportunity to be heard with respect thereto shall be given to the public. No such rule or regulation and no such amendment or repeal, shall be or become effective until sixty days after the adoption or entry thereof as aforesaid. The rules and regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the rules and regulations.

(c) After any rule or regulation has been adopted by the Board pursuant to subsection (b) of this section, it may in its discretion grant local variances therefrom, if it finds after a thorough investigation and hearing that local conditions warrant. In the event local variances are permitted, the Board shall issue an order to this effect, after a hearing is held, which order shall be subject to revocation or amendment at any time if the Board after hearing determines such amendment or revocation is warranted.

(d) After the Board shall have adopted the rules or regulations provided for in subsection (b) of this section, it shall have the power to: initiate and receive complaints as to air pollution; hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders for the purpose of enforcement of its rules or regulations pursuant to § 10-17.18:1; institute legal proceedings, including suits for injunctions for the enforcement of its orders, rules and regulations and the abatement and control of air pollution and for the enforcement of penalties, all in accordance with this chapter.

(e) The Board, in making rules and regulations, in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall take into consideration such relevant facts and circumstances as may be presented bearing upon the reasonableness of the activity involved and the regulations proposed to control it, including:

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

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

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

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

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

(g) [Repealed.]

(h) The Board may designate one of its members, the executive director, or a staff assistant to conduct the hearings provided for in this chapter, provided that a record of the hearing proceedings shall be made and furnished to the Board for its use in arriving at its decision resulting from each hearing so conducted.

(i) The Board shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the state's air pollution control policies and on the status of the state's air quality. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

§ 10-17.18:1. Issuance of special orders. — The Board shall have the power:

(a) To issue special orders: (1) to owners who are permitting or causing air pollution as defined by subsection (b) of § 10-17.10, to cease and desist from such pollution; (2) to owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the Board, to construct such facilities in accordance with or otherwise comply with, such approved plans; (3) to owners who have violated or failed to comply with the terms and provisions of any order or directive issued by the Board, to comply with such terms and provisions; (4) to owners who have contravened duly adopted and promulgated air quality standards and policies, to cease and desist from such contravention and to comply with such air quality standards and policies; and (5) to require any owner to comply with the provisions of this chapter and any decision of the Board.

(b) Such special orders are to be issued only after a hearing with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection (c) below; provided, that if the Board finds that any such owner is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, whether used for recreational, commercial, industrial, agricultural or other reasonable uses, after a reasonable attempt to give notice, it shall declare a state of emergency and it may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within ten days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the Board finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 10-17.23 or § 10-17.29.

(c) Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the Board, and the time limits specified shall be counted from the date of receipt.

(d) Nothing in this section or in § 10-17.18 shall limit the Board's authority to proceed against such owner directly under § 10-17.23 or § 10-17.29 without the prior issuance of order, special or otherwise.

§ 10-17.18:2. Decision of Board pursuant to hearing. — Any decision by the Board rendered pursuant to hearings under § 10-17.18:1 shall be reduced to writing, and shall contain the explicit findings of fact and conclusions of law upon which the decision of the Board is based. Certified copies of such written decision shall be delivered to, or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10-17.18:3. Penalties for noncompliance; judicial review. — A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

B. Upon a determination of the amount by the Board, the Board shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in such sum as the court shall deem appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the costs of assessing and collecting same, shall be paid into the general fund of the State treasury by the Board pursuant to such court order.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter. (1979, c. 65.)

§ 10-17.19. Air pollution control districts. — (a) The Board may create, within any area of the State, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the Board on its own motion or upon request of the governing body or bodies of the area involved.

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

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

(d) The governing body of any locality, wholly or partially included within any such district, may appropriate funds for use by the local committee in air pollution control and studies. (1966, c. 497; 1969, Ex. Sess., c. 3; 1972, c. 731.)

§ 10-17.20. State Advisory Committee on Air Pollution. — The Board is authorized to name technically qualified citizens to a State Advisory Committee on Air Pollution. (1966, c. 497.)

§ 10-17.21. Owners to furnish plans, specifications and information. — Every owner which the Board has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the Board furnish such plans, specifications and information as may be required by the Board in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested. (1966, c. 497; 1968, c. 311; 1975, c. 126.)

§ 10-17.22. Right of entry. — Whenever it is necessary for the purposes of this chapter, the Board or any member, agent or employee when duly authorized by the Board may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations. (1966, c. 497.)

§ 10-17.23. Compelling compliance with rules, regulations or orders of Board; penalty for violations. — A. Any owner violating, failing, neglecting or refusing to obey any rule, regulation or order of the Board may be compelled to obey the same and comply therewith by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained in subsection A, any owner violating or failing, neglecting or refusing to obey any rule, regulation or order of the Board or any provision of this chapter, shall be subject, in the discretion of the court, to a civil penalty not to exceed twenty-five thousand dollars for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of such owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. 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.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any rule, regulation or order of the Board or any provision of this chapter the Board may provide, in any order issued by the Board against the owner for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B.

§ 10-17.23. Penalties; chapter not to affect right to relief or to maintain action. — (a) Any owner violating any provision of this chapter or of the rules and regulations of the Board, or failing, neglecting, or refusing to comply with any order of the Board, lawfully issued as herein provided shall upon conviction be guilty of a misdemeanor and shall be liable to a fine of not more than one thousand dollars for each violation within the discretion of the court. Each day of continued violation after conviction shall constitute a separate offense.

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

STATE ENVIRONMENTAL IMPACT REVIEW PROCESS

§ 10-17.107. Definitions. — For the purposes of this chapter, the following words shall have the meanings ascribed to them by this section:

(a) *"Environment"* means the natural, scenic and historic attributes of the Commonwealth.

(b) *"Major State project"* means the acquisition of land for any State facility construction, the construction of any facility or expansion of an existing facility which is hereafter undertaken by any State agency, board, commission, authority or any branch of the State government, including state-supported institutions of higher learning, which costs one hundred thousand dollars or more; provided, this term shall not apply to any highway or road construction or any part thereof. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of chapter 33 of Title 15.1 of this Code or chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall authority include any housing development or redevelopment authority established pursuant to State law. For purposes of this chapter, branch of the State government shall not be construed to include any county, city or town of the Commonwealth.

(c) *"Council"* shall mean the Council on the Environment.

§ 10-17.108. State agencies to submit environmental impact reports on major projects. — All State agencies, boards, authorities and commissions or any branch of the State government shall prepare and submit a report to the Council on each major State project. Such reports shall include, but shall not be limited to, the following:

(1) The environmental impact of the major State project;

(2) Any adverse environmental effects which cannot be avoided if the major State project is undertaken;

(3) Measures proposed to minimize the impact of the major State project;

(4) Any alternatives to the proposed construction; and

(5) Any irreversible environmental changes which would be involved in the major State project.

For the purposes of subsection (4), the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why no alternatives were considered. (1973, c. 384; 1974, c. 270; 1977, c. 667.)

The 1977 amendment rewrote the introductory paragraph and substituted "major State project" for "proposed construction" in subdivisions (1), (2), (3), and (5).

§ 10-17.109. Council to review report and make statement to Governor. — Within sixty days of the receipt of the environmental impact report by the Council, the Council shall review and make a statement to the Governor commenting on the environmental impact of each major State facility. The statement of the Council shall be available to the General Assembly and to the general public at the time of submission by the Council to the Governor. (1973, c. 384; 1974, c. 270; 1977, c. 667.)

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

(2) *Eminent domain proceedings.* — The Director shall have the power to institute and prosecute any proceedings in the exercise of the power of eminent domain for the acquisition of such properties for public use in accordance with the laws relating to the exercise of such right and power, being chapters 1 and 4 (§ 25-120 et seq.) of Title 25.

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

(4) *Leasing property or placing in custody of others.* — When any property is acquired by the Director under the provisions of this section without the aid of any appropriation made by the General Assembly and exclusively with the aid of gifts or contributions placed at the disposal of the Department for that purpose, he may place such property in the custody of the person, persons, or association making such gifts or contributions, or lease the property to such person, persons, or association, for a period not to exceed ninety-nine years, upon terms and conditions approved by the Governor, which, in the opinion of the Board, will best preserve and maintain such property or properties for the use, observation, education, health or pleasure of the people of Virginia. (1926, p. 312; 1928, p. 1155; Michie Code 1942, § 585(47); R. P. 1948, § 10-16; 1950, p. 394.)

THE OPEN SPACE LAND ACT

§ 10-151. Title of chapter. — This chapter shall be known and may be cited as the "Open-Space Land Act." (1966, c. 461.)

The numbers of §§ 10-151 to 10-158 were assigned by the Virginia Code Commission, the 1966 act having assigned no numbers.

Legislative findings; purpose of chapter. — Acts 1966, c. 461, § 2, provides: "The General Assembly finds that the rapid growth and spread of urban development are creating critical problems of service and finance for the State and local governments; that the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living; that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic and scenic areas, and to conserve land and other natural resources; that the acquisition or designation of interests and rights in real property by public bodies to provide or preserve permanent open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the State; and that the exercise of authority to acquire or designate interests and rights in real property to provide or preserve permanent open-space land and the expenditure of public funds for these purposes would be for a public purpose.

"Pursuant to these findings, the General Assembly states that the purposes of this act are to authorize and enable public bodies, including as public bodies political subdivisions, to preserve permanent open-space land in urban areas (as herein defined) in order to assist in the solution of the problems and the attainment of the objectives stated in its findings."

§ 10-152. Authority of public bodies to acquire or designate property for use as open-space land. — To carry out the purposes of this chapter, any public body may (a) acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interests or rights of not less than thirty years' duration in real property that will provide a means for the preservation or provision of open-space land and (b) designate any real property in which it has an interest of not less than thirty years' duration to be retained and used for the preservation and provision of open-space land. Any such interest may also be perpetual. The use of the real property for open-space land shall conform to the official comprehensive plan for the area in which the property is located. No property or interest therein shall be acquired by eminent domain by any public body for the purposes of this chapter, provided, however, this provision shall in no way limit the power of eminent domain as it was possessed by any public body prior to the passage of this chapter. (1966, c. 461; 1974, c. 259.)

§ 10-153. Diversion of property from open-space land use; conveyance or lease of open-space land. — (a) No open-space land, the title to or interest of right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless the conversion or diversion is determined by the public body to be (1) essential to the orderly development and growth of the urban area, and (2) in accordance with the official comprehensive plan for the urban area in effect at the time of conversion or diversion. Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as permanent open-space land shall be substituted within a reasonable period not exceeding one year for any real property converted or diverted from open-space land use, unless the public body should determine that such open-space land or its equivalent is no longer needed. The public body shall assure that the property substituted will be subject to the provisions of this chapter.

(b) A public body may convey or lease any real property it has acquired and which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection (a) of this section. (1966, c. 461.)

§ 10-154. Further powers of public bodies. — (a) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(1) To borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(2) To advance or accept advances of public funds;

(3) To apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(4) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(5) In connection with the real property acquired and designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities or structures that may be necessary to the provision, preservation, maintenance and management of the property as open-space land;

(6) To insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(7) To demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(8) To exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by State law, and with one or more public bodies of this State, and to enter into agreements for joint or cooperative action.

(B) For the purposes of this chapter, the State or a city, town, or county may:

(1) Appropriate funds;

(2) Levy taxes and assessments;

(3) Issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the State: and

(4) Exercise its powers under this chapter through a board or commission, or through such office or officers as its governing body by resolution determines or as the Governor determines in the case of the State. (1966, c. 461.)

§ 10-155. Assessment of real property where interest less than fee is held by public body; exemption of interest of public body from taxation. — Where an interest in real property less than the fee is held by a public body for the purposes of this chapter, assessments made on the property for taxation shall reflect any change in the market value of the property which may result from the interest held by the public body. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body. (1966, c. 461.)

§ 10-156. Definitions. — The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(a) *"Public body"* means any State agency having present authority to acquire land for a public use, or any county or municipality, or any park authority or public recreational facilities authority.

(b) *"Urban area"* means any area which is urban or urbanizing in character, including semiurban areas and surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, resort, and other activities.

(c) *"Open-space land"* means any land in an urban area which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, (4) assisting in the shaping of the character, direction, and timing of community development, or (5) wetlands as defined in § 62.1-13.2 of the Code of Virginia. (1966, c. 461; 1974, c. 348.)

§ 10-157. Chapter controlling over other laws; powers supplemental. — Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. (1966, c. 461.)

§ 10-158. Acquisition of title subject to reservation of farming or timber rights; acquisition of easements, etc.; property to be made available for farming and timber uses. — Any public body is hereby expressly authorized, without limiting the authority of the public body to acquire unrestricted fee simple title to tracts, to acquire, by gift or purchase, (1) fee simple title to such land subject to reservation of rights to use such lands for farming or to reservation of timber rights thereon, or (2) easements in gross or such other interests in real estate of not less than thirty years' duration as are designed to maintain the character of such land as open-space land. Any such interest may also be perpetual. Whenever practicable in the judgment of such public body, real property acquired pursuant to this chapter shall be made available for agricultural and timbering uses which are compatible with the purposes of this chapter. (1966, c. 461; 1974, c. 259.)

§ 10-177. Short title; definitions. — This chapter may be cited as the "Virginia Environmental Quality Act."

For the purposes of this chapter, the following words are defined:

(1) *"Person"* means any individual or group; any partnership, corporation, association, organization or other legal entity, including any public body.

(2) *"Public body"* means any municipal corporation, county, or other political subdivision of the State; or any agency, department, or instrumentality of the State or of any political subdivision of the State. (1972, c. 774.)

The numbers of §§ 10-177 to 10-186 were assigned by the Virginia Code Commission, the numbers in the 1972 act having been 10-176 to 10-185.

Code Commission note. — This chapter was repealed by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was itself repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

Law Review. — For note on relations between states and Environmental Protection Agency, see 33 Wash. & Lee L. Rev. 590 (1976).

§ 10-178. Declaration of policy. — In furtherance of Article XI of the Constitution of Virginia and in recognition of the vital need of citizens of the Commonwealth to live in a healthful and pleasant environment, it is hereby declared to be the policy of the Commonwealth to promote the wise use of its air, water, land and other natural resources and to protect them from pollution, impairment or destruction so as to improve the quality of its environment.

It shall be the continuing policy of the government of the Commonwealth — in cooperation with the federal government, other state governments, local governments, other public and private organizations, and individuals — to initiate, implement, improve, and coordinate environmental plans, programs, and functions of the State in order to promote the general welfare of the people of the Commonwealth and fulfill the State's responsibility as trustee of the environment for the present and future generations. (1972, c. 774.)

§ 10-179. Implementation of policy. — The General Assembly authorizes and directs that, to the fullest extent practicable, the laws, regulations, and policies of the Commonwealth shall be interpreted and administered in accordance with the policies set forth in this chapter, and that the efforts of all State officers and employees shall be coordinated so as to effectuate said policy. (1972, c. 774.)

§ 10-180. Council established. — To implement the policy set forth in this chapter, there is hereby established in the office of the Governor a Council on the Environment. (1972, c. 774.)

§ 10-181. Membership; chairman. — The Council on the Environment shall be composed of ten members and an administrator who shall all be citizens of the State. Three shall be appointed by the Governor on the basis of merit without regard to political affiliation, subject to confirmation by the General Assembly, but they shall be permitted to serve in the interim between appointment and confirmation or rejection. They shall hold office at the pleasure of the Governor until their successors take office. The administrator of the Council on the Environment shall serve as chairman. The chairmen of the State Water Control Board, the Board of Conservation and Economic Development, the Game and Inland Fisheries Commission, the Marine Resources Commission, the Soil and Water Conservation Commission and the State Air Pollution Control Board and the Commissioner of Health shall also be members of the Council. (1972, c. 774; 1974, c. 354; 1975, c. 263.)

§ 10-182. Compensation of members. — The members of the Council shall receive their necessary expenses incurred in the discharge of functions as members of the Council. (1972, c. 774.)

§ 10-183. Meetings. — The Council shall meet at least once every three months, and other meetings may be held at any time or place determined by the Council or upon call of the administrator. All members shall be notified of the time and place of any meeting at least five days in advance. Five members shall constitute a quorum for the transaction of business. The Council shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Council and open to public inspection. (1972, c. 774; 1974, c. 354.)

§ 10-184: Repealed by Acts 1974, c. 354.

Cross reference. — For present provisions as to administrator and personnel, see § 10-184.1.

§ 10-184.1. Appointment, etc., powers and duties of administrator. — The administrator of the Council on the Environment shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident to that of the appointing Governor. Any vacancies occurring in the office of administrator shall be filled by the Governor subject to confirmation by the General Assembly. The administrator of the Council on the Environment shall devote full time to the duties and responsibilities of his office, which shall include the following:

(1) Developing uniform management and administrative systems which will assure coherent environmental policies and which will facilitate provision of environmental services to the public;

(2) Taking necessary steps to promote the efficiency of management and coordinate administrative practices within and among the boards and agencies of the Council including the effective use of personnel resources among the agencies;

(3) [Repealed.]

(4) Coordinating the preparation of a joint environmental agencies' budget, containing subbudgets, each of which shall be approved by the appropriate board or agency and thereafter submitted to the administrator who shall convey without change said budget or budgets to the Secretary and Governor for approval;

(5) Preparing and submitting annually, with the cooperation of the boards and agencies, an environmental and management report to the Governor and the General Assembly in which he shall assess in detail:

(a) The Council's success in achieving the purposes of the enabling legislation.

(b) The reasons for any failure to achieve those purposes.

(c) Any changes in legislation that the Council believes necessary to better achieve those purposes.

(d) Management actions taken in support of the enabling legislation.

(e) New environmental programs to be considered for legislative action.

(f) New environmentally related programs which should be considered by the General Assembly for transfer to another board or agency or to the jurisdiction of the administrator.

Such reports may be prepared in conjunction with the reports of the Council on the Environment as directed by § 10-186.

The administrator shall employ such personnel and procure the necessary professional services to perform the duties of the office. (1974, c. 354; 1976, c. 466.)

§ 10-184.2. **Multiple permit process; powers and duties of administrator; rules and regulations.** — A. If a project requires a State permit or certificate from more than one State environmental regulatory agency, the applicant may make a single unified application to the administrator on a form prescribed by the administrator.

B. Notwithstanding any other provision of law, the administrator shall receive and review the application within twenty-one days and at his discretion may consolidate, coordinate and expedite the permit review process including but not limited to the elimination of redundant or overlapping procedures; consolidation of any formal hearings that may be required into one hearing; and coordination of the processing of permits where both federal and State requirements are involved.

C. For the purposes of this section the State environmental regulatory agencies shall include: the State Air Pollution Control Board; the Board of Conservation and Economic Development; the State Health Department; the Marine Resources Commission; the Soil and Water Conservation Commission and the State Water Control Board.

D. Notwithstanding any other provision of law, the acceptance of an application for multiple permits by the administrator, after the administrator has ascertained that the application is complete and otherwise acceptable, shall commence the processing period as to each board or commission involved. The hearing for a multiple State permit shall be held within sixty days after the application to the administrator is complete; and each board or commission decision on a multiple permit shall be made within ninety days after the application to the administrator is complete. In exceptional circumstances or in light of new information presented during a public hearing, a board or commission may extend the time period for consideration of the multiple permit by a board or commission; provided that the extension shall be for a period not to exceed thirty days.

E. Judgment of the merits of each permit that is required shall remain the responsibility of each respective board or commission. Each board or commission shall make every effort to coordinate its permit review process with the administrator.

F. The Council on Environment shall have the authority to issue necessary rules and regulations to carry out the provisions of this section. (1976, c. 466.)

Law Review. — For survey on Virginia administrative law for the year 1975-1976, see 62 Va. L. Rev. 1357 (1976).

§ 10-185. **Further responsibility and authority of administrator.** — It shall be the further responsibility of the administrator of the Council, in accordance with provisions and limitations as may be elsewhere set forth in law, to carry out the policy of this chapter. In so doing, the administrator is authorized to:

(1) Coordinate all State communications with federal agencies involving State concern having relation to environmental problems, and to call meetings as needed of heads of State agencies and other personnel to review policies and programs of mutual concern relating to environmental problems;

(2) Make rules and regulations for his own staff organization;

(3) Sue and be sued in the Council's official name;

(4) Enter into and perform contracts; and acquire in any lawful manner personal or real property or any interest therein deemed necessary in the performance of the Council's functions; and to maintain and improve such property or dispose of it when necessary;

(5) Accept and administer services, gifts and other funds donated to the Council to carry out the policy of this chapter;

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

(7) Initiate and supervise research programs.

(8), (9) [Repealed.] (1972, c. 774; 1974, c. 354; 1976, c. 466.)

§ 10-136. Duties. — It shall be the duty of the Council to implement the policy of this chapter. Specifically, the Council shall, among other things:

(1) After holding public hearings annually throughout the State, issue a report on the activities of the Council and the state of the environment. The report shall include, among other things:

(a) An assessment, updated annually, of the environmental choices and their trends and implications projected over a twenty-year period substantially affecting the Commonwealth that are made by any person;

(b) Recommendations to the Governor, updated annually, concerning the policies necessary to exert the influence of the Commonwealth to the fullest extent practicable to change the environmental choices identified in subsection (1) (a) above so as to insure, over the next succeeding twenty-year period, the wise use and wise protection of the State's natural resources to the end that a balance is achieved and maintained between environmental protection and economic well-being of the Commonwealth, such recommendations being made by coordinating to the fullest extent practicable with interested State agencies; and

(c) An assessment of the effects of State policy in insuring that the objectives in subsection (1) (b) above are being and will be met.

Each report shall be published, issued to the Governor, and made available for purchase by citizens.

(2) Advise the Governor and General Assembly, and, on request, assist other officers, employees, and public bodies of the State, on matters relating to environmental quality and the effectiveness of actions and programs designed to enhance that quality; and recommend to the officers and public bodies of the State measures it believes are necessary to enhance the quality of the State's environment;

(3) Conduct public hearings throughout the State to give citizens the opportunity to contribute ideas regarding environmental quality; and

(4) Initiate and supervise programs designed to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solution, population and its relation to environmental problems, and other matters concerning environmental quality. (1972, c. 774.)

PUBLIC BEACH CONSERVATION AND DEVELOPMENT ACT

§ 10-215. Findings of the General Assembly. — The General Assembly of Virginia finds that:

1. The Constitution of Virginia sets forth that it shall be the policy of the Commonwealth to protect its atmosphere, lands and waters from pollution, impairment or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

2. The shores of the Commonwealth of Virginia constitute a resource of inestimable value to all persons of the State;

3. Public beaches provide important recreational and aesthetic opportunities to the general public as well as contribute significantly to the economic welfare of the Commonwealth and its localities;

4. Public beaches are a rare and valuable resource and should be conserved and developed;

5. Public beaches are eroding, thereby diminishing important recreational, aesthetic and economic benefits associated with such areas;

6. Public awareness of the values of shore areas, the causes and effects of erosion and techniques to control erosion is low; and

7. The level of research and development activities in the area of new erosion control methods and new sources of sand for public beach conservation and development is inadequate to satisfactorily address the magnitude of the problem. (1980, c. 428.)

§ 10-216. Declaration of policy. — In consideration of the findings in § 10-215, the General Assembly hereby declares that it is the policy of the Commonwealth:

1. To conserve, protect, improve, maintain and develop public beaches for the benefit, use and enjoyment of the citizens of the Commonwealth;

2. To promote understanding of the value of public beaches and the causes and effects of erosion;

3. To make available information concerning erosion of public beaches;

4. To encourage research and development of new erosion control techniques and new sources of sand for public beach enhancement;

5. To provide a program by which localities can apply for funding of conservation, protection, improvement, maintenance and development of public beaches; and

6. To address erosion on a reach basis where possible. (1980, c. 428; 1984, c. 235.)

§ 10-217. **Definitions.** — For the purposes of this chapter the following words shall have the meanings ascribed to them:

"Agency of this State" includes the government of this Commonwealth and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this Commonwealth.

"Commission" means the Public Beach Conservation and Development Commission created in § 10-218.

"Director" means the Director of the Department of Conservation and Historic Resources.

"Erosion" means the process of destruction by the action of wind, water, or ice of the land bordering the tidal waters of the Commonwealth of Virginia.

"Government" or *"governmental"* includes the government of this Commonwealth, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Locality" means a city, county or town.

"Program" means the provisions of the Public Beach Conservation and Development Act.

"Public beach" means a sandy beach located on a tidal shoreline suitable for bathing in a city, county or town and open to indefinite public use.

"Reach" means a shoreline segment wherein there is mutual interaction of the forces of erosion, sediment transport and accretion.

"State" or *"Commonwealth"* means the Commonwealth of Virginia.

"United States" or *"agencies of the United States"* includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

"Develop" or *"development"* means the replenishment and restoration of existing public beaches. (1980, c. 428; 1984, c. 750.)

§ 10-218. (**Effective January 1, 1985**) **Commission created, duties, meetings; compensation; allocation of funds.** — A. There is hereby created a Commission on Conservation and Development of Public Beaches. The Commission shall: (i) review the financial needs of localities for implementation of the Public Beach Conservation and Development Act; (ii) determine successful applicants and the equitable allocation of funds among participating localities; and (iii) oversee local implementation of approved projects.

B. The Commission shall be composed of eight members as follows: One member ex officio shall be selected from each Department or Commission by the Directors of the Virginia Marine Resources Commission, and the Department of Conservation and Historic Resources and six members-at-large shall be appointed by the Governor subject to confirmation by the General Assembly. Members-at-large shall be appointed for terms of four years. Members-at-large are ineligible for reappointment after two terms until four years have elapsed since their last appointment. All terms shall begin July 1, and appointments to fill vacancies occurring shall be for the unexpired term. A chairman shall be selected from among the members-at-large.

C. The Commission shall meet once prior to the beginning of each fiscal year to receive applications for grants from localities and to determine the allocation of such grants, and as often throughout the year as necessary.

D. Commission members shall be compensated at the rate and manner provided by § 14.1-18 of this Code.

E. The Department of Conservation and Historic Resources shall provide staff assistance from time to time if required and shall maintain such financial records of activities as are necessary. (1980, c. 428; 1984, cc. 739, 750.)

§ 10-219. **Relationship of Commission and Director; regulations.** — The Commission shall be responsible for the allocation of the grant fund established in § 10-220. The Commission shall submit the names of recipient localities to the Director of the Department of Conservation and Historic Resources and the Director shall disburse funds to designated localities. The Commission may promulgate regulations governing application procedures, allocation guidelines or implementation standards. (1980, c. 428; 1984, c. 750.)

§ 10-220. Establishment of fund; unexpended money. — A. A fund shall be established to provide grants to local governments covering up to one-half of the costs of erosion abatement measures designed to conserve, protect, improve, maintain and develop public beaches. No grants to any locality shall exceed thirty percent of the money appropriated to such fund for the biennium.

Money appropriated from such fund shall be matched equally by local funds. Federal funds shall not be used by localities to match money given from such fund. Localities may, however, combine state and local funds to match equally federal funds for purposes of securing federal grants.

B. Money which remains unexpended from such fund at the end of the biennium for which it was appropriated shall be retained and shall become a Special Emergency Assistance Fund to be used at the discretion of the Governor for the emergency conservation and development of public beaches damaged or destroyed by an unusually severe storm, hurricane or other natural disaster. (1980, c. 428; 1982, c. 329.)

The 1982 amendment substituted "percent" for "per centum" and "the biennium" for "that year" in the second sentence of subsection A.

§ 10-221. Guidelines for allocation of grant funds. — The Commission shall consider the following when selecting localities for program participation and in determining grant allocations:

1. Present and future beach ownership;
2. Erosion caused by public navigational works;
3. Intensity of use;
4. Availability of public beaches in the vicinity;
5. Evidence of a locality's ability and willingness to develop a long term capacity to combat erosion;
6. Rate of erosion;
6a. Actions of a locality which lead to, or may result in, the erosion of beaches; and
7. Such other matters as the Commission shall deem sufficient for consideration. (1980, c. 428; 1984, c. 235.)

§ 10-222. Local erosion advisory commissions. — In order to qualify for the program, localities shall establish local erosion advisory commissions which shall determine local erosion problems, review the locality's erosion control projects, suggest strategies for the future, and assess program implementation. (1980, c. 428; 1984, c. 235.)

UNDERWATER HISTORIC PROPERTY

§ 10-262. (Effective January 1, 1985) Underwater historic property. — A. "Underwater historic property" shall mean any submerged shipwreck, vessel, cargo, tackle or underwater archaeological specimen, including any object found at underwater refuse sites or submerged sites of former habitation, that has remained unclaimed on the state-owned subaqueous bottom and has historic value as determined by the Department of Conservation and Historic Resources.

B. Underwater historic property shall be preserved and protected and shall be the exclusive property of the Commonwealth. Preservation and protection of such property shall be the responsibility of all state agencies including but not limited to the Department, the Virginia Institute of Marine Science, and the Virginia Marine Resources Commission. Insofar as may be practicable, such property shall be preserved, protected and displayed for the public benefit within the county or city within which it is found, or within a museum operated by a state agency.

C. It shall be unlawful for any person, firm or corporation to conduct any type of recovery operations involving the removal, destruction or in any way disturbing any underwater historic property without first making application to and receiving a permit from the Virginia Marine Resources Commission for a permit to conduct such operations pursuant to § 62.1-3 of the Code of Virginia. If the Virginia Marine Resources Commission, with the concurrence of the Department, and in consultation with the Virginia Institute of Marine Science and other concerned state agencies, finds that granting the permit is in the best interest of the Commonwealth, it shall grant the applicant a permit. The permit shall require that all objects recovered shall be the exclusive property of the Commonwealth. The permit shall provide the applicant with a fair share of the objects recovered, or in the discretion of the Department, a reasonable percent of the cash value of the objects recovered to be paid by the Department. Title to all objects recovered shall be retained by the Commonwealth unless or until they are released to the applicant by the Department. All recovery operations undertaken pursuant to permit issued under this section shall be carried out under the general supervision of the Department and in accordance with § 62.1-3 of the Code of Virginia and in such a manner that the maximum amount of historic, scientific, archaeologic and educational information may be recovered and preserved in addition to the physical recovery of items. The Virginia Marine Resources Commission shall grant no such permit to conduct such operations at substantially the same location described and covered by a permit previously granted if recovery operations are being actively pursued under such previously granted permit, unless the person, firm, or corporation holding the previously granted permit concurs in the grant of another permit.

D. The Department may seek a permit pursuant to this section and § 62.1-3 of the Code of Virginia to preserve and protect or recover any underwater historic property.

E. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor and, in addition, shall forfeit to the Commonwealth any objects recovered. (1984, c. 750.)

Authorization of Local Government to Regulate Land and Water Uses Through Zoning

§ 15.1-486. Zoning ordinances generally; jurisdiction of counties and municipalities respectively. — The governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

(a) The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;

(b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;

(c) The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used;

(d) The excavation or mining of soil or other natural resources.

(e) [Repealed.]

For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality. (Code 1950, §§ 15-819, 15-844; Code 1950 (Suppl.), § 15-968; 1962, c. 407; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641.)

§ 15.1-486.2. Zoning ordinances relating to homes for certain handicapped persons; policy; permitted use of property. — A. It is the policy of this State that physically handicapped, mentally ill, or mentally retarded and other developmentally disabled persons should not be excluded by county or municipal zoning ordinances from the benefits of normal residential surroundings. Furthermore, it is the policy of this State to encourage and promote the dispersion of residences for the physically handicapped, mentally ill, mentally retarded and other developmentally disabled persons to achieve optimal assimilation and mainstreaming into the community. Toward this end it is the policy of this State that the number of such group homes and their location throughout the State and within any given political subdivision should be proportional, insofar as possible, to the population and population density within the State and local political subdivisions.

B. Notwithstanding any other provision of law, pursuant to the policy set out in subsection A, locally adopted zoning regulations shall provide for family care homes, foster homes or group homes serving physically handicapped, mentally ill, mentally retarded or other developmentally disabled persons, not related by blood or marriage, in an appropriate residential zoning district or districts.

C. Conditions which are not required of other dwellings in the same zone may be imposed on such homes only when such additional conditions are related to the physical or mental handicap of the residents and are necessary to protect the health and safety of the residents of such homes. Reasonable conditions may also be imposed on such homes to assure their compatibility with other permitted uses in the area. (1977, c. 648; 1981, c. 611.)

§ 15.1-487: Repealed by Acts 1975, c. 641.

§ 15.1-488. Regulations to be uniform. — All such regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts. (Code 1950, §§ 15-820, 15-845; Code 1950 (Suppl.), § 15-968.2; 1962, c. 407.)

§ 15.1-489. Purpose of zoning ordinances. — Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.1-427. To these ends, such ordinances shall be designed (1) to provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers; (2) to reduce or prevent congestion in the public streets; (3) to facilitate the creation of a convenient, attractive and harmonious community; (4) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (5) to protect against destruction of or encroachment upon historic areas; (6) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers; (7) to encourage economic development activities that provide desirable employment and enlarge the tax base; and (8) to provide for the preservation of agricultural and forestal lands. (Code 1950, § 15-821; Code 1950 (Suppl.), § 15-968.3; 1962, c. 407; 1966, c. 344; 1968, c. 407; 1975, c. 641; 1976, c. 642; 1980, c. 321.)

§ 15.1-490. Matters to be considered in drawing zoning ordinances and districts. — Zoning ordinances and districts shall be drawn with reasonable consideration for the existing use and character of property, the existing land use plan, the comprehensive plan where adopted, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, and the requirements for housing, schools, parks, playgrounds, recreation areas, and other public services; for the conservation of natural resources; and preservation of flood plains; for the preservation of agricultural and forestal land; and for the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the county or municipality. (Code 1950, § 15-821; Code 1950 (Suppl.), § 15-968.4; 1962, c. 407; 1966, c. 344; 1974, c. 526; 1978, c. 279; 1981, c. 418.)

§ 15.1-491. Permitted provisions in ordinances; amendments. — A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

(a) For variations in or exceptions to the general regulations in any district in cases of unusual situations or to ease the transition from one district to another or for buildings, structures or uses having special requirements, and for the adoption, in counties, or towns therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city completely surrounded by such a county, or in a county contiguous to any such county, or in a city completely surrounded by such a contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15.1-493 by the owner of the property which is the subject of the proposed zoning map amendment. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by such conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

(b) For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

(c) For the granting of special exceptions under suitable regulations and safeguards; and notwithstanding any other provisions of this article, the governing body of any city, county or town may reserve unto itself the right to issue such special exception or use permit.

(d) For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the county or municipality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance, including the ordering in writing of the remedying of any condition found in violation of the ordinance, and the bringing of legal action to insure compliance with the ordinance, including injunction, abatement, or other appropriate action or proceeding.

(e) For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than ten dollars nor more than one thousand dollars.

(f) For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

(g) For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice require, the governing body may by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated by resolution of the governing body, or by motion of the local commission, or by petition of any property owner addressed to the governing body or the local commission, who shall forward such petition to the governing body; provided, that the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map, pending on July one, nineteen hundred seventy-four, shall be acted upon and a decision made on or before December thirty-one, nineteen hundred seventy-five; all of such motions, resolutions or petitions accepted for filing after July one, nineteen hundred seventy-four, but prior to July one, nineteen hundred seventy-five shall be acted upon and a decision made on or before June thirtieth, nineteen hundred seventy-six; all such motions, resolutions or petitions accepted for filing after July one, nineteen hundred seventy-five, shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed twelve months, unless accepted for filing prior to December thirty-one, nineteen hundred seventy-five, in which case they shall be acted upon and a decision made on or before December thirty-one, nineteen hundred seventy-six.

(h) For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

The ordinance may also provide that petitions brought by property owners or their agents shall be sworn to under oath before a notary public or other official before whom oaths may be taken, stating whether or not any member of the local commission or governing body has any interest in such property, either individually, by ownership of stock in a corporation owning such land, or partnership, or whether a member of the immediate household of any member of the commission or governing body has any such interest. (Code 1950 (Suppl.), § 15-968.5; 1962, c. 407; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182.)

Permit Requirement for Septic Tank Installation

§ 15.1-520. Regulation of installation of septic tanks. — Any county may regulate the installation of septic tanks on property located therein, and may require any person desiring to install a septic tank to secure a permit to do so and may prescribe reasonable fees for the issuance of such permits.

Authority to Issue Bonds for Land Aquistion

§ 15.1-1278. Authority to issue bonds; source of payment. — The authority is hereby authorized to issue bonds from time to time in its discretion for the purpose of paying all or any part of the cost of acquiring, purchasing, constructing, reconstructing, improving or extending any project and acquiring necessary land and equipment therefor. The authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable as to principal and interest: (a) from its revenues generally; (b) exclusively from the income and revenues of a particular project; or (c) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds.

Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, or a pledge of any income or revenues of the authority, or a mortgage or any project or other property of the authority.

Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of the Commonwealth or any political subdivision thereof and neither the Commonwealth nor any political subdivision thereof other than the authority shall be liable thereon, nor shall such bonds or obligations be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction. Bonds of the authority are declared to be issued for an essential public and governmental purpose. (Code 1950 (Suppl.), § 15-714.20; 1962, c. 393, § 8.)

RESPONSIBLITIES OF SOIL AND WATER CONSERVATION COMMISSION

§ 21-11.16. Declaration of policy. — The shores of the Commonwealth of Virginia are a most valuable resource that should be protected from erosion which reduces the tax base, decreases recreational opportunities, decreases the amount of open space and agricultural lands, damages or destroys roads and produces sediment that damages marine resources, fills navigational channels, degrades water quality and, in general, adversely affects the environmental quality; therefore, the General Assembly hereby recognizes shore erosion as a problem which directly or indirectly affects all of the citizens of this State and declares it the policy of the State to bring to bear the state's resources in effectuating effective practical solutions thereto. (1972, c. 855.)

§ 21-11.18. Responsibility of Soil and Water Conservation Commission. — In addition to the other duties and responsibilities conferred by this chapter, the Virginia Soil and Water Conservation Commission shall have the duty and responsibility to make the necessary coordination of shore erosion control programs of all state agencies and institutions, other than those affecting public beaches, and to secure the cooperation and assistance of the United States and any of its agencies to protect waterfront property from destructive erosion; to evaluate the effectiveness and practicability of current programs; and to explore all facets of the problems and alternative solutions to determine if other practical and economical methods and practices may be devised to control shore erosion. Such coordination shall not restrict the statutory authority of the individual agencies having responsibilities relating to shore erosion control. (1972, c. 855: 1980, c. 368.)

§ 21-11.20. Cooperation and coordination with Virginia Institute of Marine Science. — The Soil and Water Conservation Commission shall cooperate and coordinate with the Virginia Institute of Marine Science of the College of William and Mary for research, training and technical advice on erosion-related problems. (1980, c. 368.)

Applied in United Land Corp. of Am. v. Clarke, 613 F.2d 497 (4th Cir. 1980).

§ 21-89.2. Findings of General Assembly. — The General Assembly has determined that the lands and waters comprising the watersheds of the State are great natural resources; that as a result of erosion of lands and sediment deposition in waters within the watersheds of the State, said waters are being polluted and despoiled to such a degree that fish, aquatic life, recreation and other uses of lands and waters are being adversely affected; that the rapid shift in land use from agricultural to nonagricultural uses has accelerated the processes of soil erosion and sedimentation; and further, it is necessary to establish and implement, through the Virginia Soil and Water Conservation Commission, hereinafter referred to as the "Commission," and the soil and water conservation districts, hereinafter referred to as "districts," in cooperation with counties, cities, towns, other subdivisions of this State, and other public and private entities, a statewide coordinated erosion and sediment control program to conserve and to protect the land, water, air and other natural resources of the Commonwealth. (1973, c. 486.)

§ 21-89.3. Definitions. — As used in this article, unless the context clearly indicates otherwise:

(a) *"Land-disturbing activity"* shall mean any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the State, including, but not limited to, clearing, grading, excavating, transporting and filling of land, other than federal lands, except that the term shall not include: (i) such minor land-disturbing activities as home gardens and individual home landscaping, repairs and maintenance work; (ii) individual service connections; (iia) construction, installation, or maintenance of electric and telephone utility lines; (iib) installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced; (iii) septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system; (iv) surface or deep mining; (iva) exploration or drilling for oil and gas including the well site, roads and off-site disposal areas; (v) neither shall it include tilling, planting, or harvesting of agricultural, horticultural, or forest crops; (vi) construction, repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (vii) preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development; (viii) disturbed land areas for commercial or noncommercial uses of less than 10,000 square feet in size; provided, however, that the governing body of the county, city, town or district, may reduce this exception to a smaller area of disturbed land and/or qualify the conditions under which this exception shall apply; (ix) installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (x) shore erosion control projects on tidal waters recommended by the soil and water conservation districts in which the projects are located or approved by the Marine Resources Commission; (xi) emergency work to protect life, limb or property, and emergency repairs; provided that if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirement of the local plan-approving authority or the Commission when applicable.

(b) *"Person"* shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of this State, any interstate body, or any other legal entity.

(c) *"Town"* shall mean an incorporated town.

(d) *"Conservation standards"* or *"standards"* shall mean standards adopted by the Commission or the districts, counties, cities and towns pursuant to §§ 21-89.4 and 21-89.5, respectively, of this article.

(e) *"Specifications"* shall mean the written procedures, requirements or plans to control erosion and sedimentation as officially adopted by the governing board or commission of a state agency or institution or by an agency's administrative head if there is no board or commission.

(f) *"Conservation plan," "erosion and sediment control plan,"* or *"plan,"* shall mean a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

(g) *"State erosion and sediment control program"* or *"state program"* shall mean the program adopted by the Commission consisting of conservation standards, guidelines and criteria to minimize erosion and sedimentation.

(h) *"Local erosion and sediment control program"* or *"local control program"* shall mean an outline or explanation of the various elements or methods employed by a district, county, city, or town to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as a local ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.

(i) *"Plan approving authority"* shall mean the district or a county, city, or town, or a department of a county, city, or town, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and shall approve such plan if the plan is determined to be adequate. (1973, c. 486; 1974, c. 265; 1977, c. 149; 1980, c. 305.)

§ 21-89.4. State erosion and sediment control program. — (a) The Commission shall establish minimum standards, guidelines and criteria for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any control program. To assist in the development of the program, the Commission shall seek the advice of the State Water Control Board (the opinion of the State Water Control Board shall be advisory only) and may seek the advice of other appropriate state and federal agencies and shall name an advisory board of not less than seven nor more than eleven members which shall include but not be limited to representatives of such interests as residential development and construction, nonresidential construction, and agriculture. At least two members of the advisory board shall be from the public at large having no direct pecuniary interest, and at least two members shall be from local governments.

(b) To implement this program, the Commission shall develop and adopt by July one, nineteen hundred seventy-four, guidelines for erosion and sediment control, which guidelines may be revised from time to time as may be necessary. In accordance with Chapter 1.1:1 of Title 9 of this Code, the Commission shall give due notice and conduct public hearings on the proposed guidelines or proposed change in existing guidelines before adopting or revising such guidelines. The guidelines for carrying out the program shall:

(1) Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

(2) Include such survey of lands and waters as may be deemed appropriate by the Commission or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

(3) Contain conservation standards for various types of soils and land uses, which standards shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

(c) The program and guidelines shall be made available for public inspection at the office of the Commission. (1973, c. 486.)

§ 21-89.5. Local erosion and sediment control programs. — (a) Each district in the Commonwealth, except as provided in subsection (c) of this section, shall within eighteen months after the adoption of the state guidelines, develop and adopt a soil erosion and sediment control program consistent with the state program and guidelines for erosion and sediment control. Districts adopting such programs shall do so pursuant to the provisions of the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia. To assist in developing its program, each district shall name an advisory committee of not less than seven nor more than eleven members which shall include but not be limited to representatives of such interests as residential development and construction, nonresidential construction, and agriculture. At least two members of the advisory board shall be from the public at large having no direct pecuniary interest, and at least two members shall be from local governments. Upon the request of a district the Commission shall assist in the preparation of the district's program. Upon adoption of its program, the district shall submit the program to the Commission for review and approval.

To carry out its program the district shall, within one year after the program has been approved by the Commission, establish, consistant with the state program and guidelines, conservation standards for various types of soils and land uses, which standards shall include criteria, guidelines, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities. Such conservation standards may be revised from time to time as may be necessary. Before adopting or revising conservation standards, the district shall, after giving due notice, conduct a public hearing on the proposed conservation standards or proposed changes in existing standards. The program and conservation standards shall be made available for public inspection at the principal office of the district.

(b) In areas where there is no district, a county, city, or town shall develop, adopt and carry out the erosion and sediment control program and exercise the responsibilities of a district with respect thereto, as provided in this article; except that the provisions for an advisory committee shall not be mandatory.

(c) Any county, city, or town that, prior to July 1, 1975, has adopted its own erosion and sediment control program which has been approved by the Commission shall be treated under this article as a county, city, or town which lies in an area where there is no district, whether or not such district in fact exists.

Any town, lying within a county which adopts its own erosion and sediment control program, must adopt its own program, or adopt jointly with the county an erosion and sediment control program or authorize the county to adopt the program for the town. If a town lies within the boundaries of more than one county, such town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. Any county, city, or town adopting an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.

(d) If a district, or county, city, or town not in a district, fails to submit a program to the Commission within the period specified herein, the Commission shall, after such hearings or consultations as it deems appropriate with the various local interests involved, develop and adopt an appropriate program to be carried out by such district, county, city, or town. The Commission shall do likewise with respect to any town lying within a county which adopts its own erosion and sediment control program and such town does not provide for land-disturbing activities within the town to be covered by a local control program.

(e) Any district, county, city or town which administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration, including costs associated with the issuance of grading or land-disturbing permits, plan review, and periodic inspection for compliance with erosion and sediment control plans; provided, that charges for such costs are not made under any other law, ordinance, or program. Such fees shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and administrators' expense involved, or $300, whichever is least.

(f) Notwithstanding any other provision of this chapter, districts or localities which have adopted local erosion and sediment control programs shall not be required to conduct public hearings when amending their local programs to conform to any revisions in the state program. Districts or localities which choose to adopt conservation standards which are more stringent than the provisions of the state program, however, shall conduct a public hearing after giving due notice.

§ 21-89.6. Regulated land-disturbing activities. — (a) Except as provided in subsections (e) and (f) of this section, no person may engage in any land-disturbing activity after the adoption of the conservation standards by the districts, counties, cities or towns until he has submitted to the district, county, city, or town an erosion and sediment control plan for such land-disturbing activity and such plan has been reviewed and approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the Commission for review and approval rather than submission to each jurisdiction concerned.

(b) Upon submission of an erosion and sediment control plan to a plan-approving authority or to the Commission:

(1) The plan-approving authority shall, within forty-five days, approve any such plan if it determines that the plan meets the conservation standards of the local control program and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this article;

(2) The Commission shall review plans submitted to it and shall within forty-five days approve any such plan if it determines that the plan is adequate in consideration of the Commission's guidelines and the conservation standards of the local control program or programs involved, and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article.

(c) The plan-approving authority or Commission must act on all plans submitted within forty-five days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this section is found, upon review by the respective agency, to be inadequate, such agency shall specify such modifications, terms, and conditions as will permit approval of the plan and communicate these requirements to the applicant as herein required. If no action is taken by the plan-approving authority or Commission within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d) An approved plan may be changed by the authority which has approved the plan or by the Commission when it has approved the plan in the following cases:

(1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are agreed to by the plan-approving authority and the person responsible for carrying out the plan; or

(2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan-approving authority and the person responsible for carrying out the plan.

(e) Any person owning, occupying, or operating private agricultural, horticultural or forest lands shall not be deemed to be in violation of this article for land-disturbing activities resulting from the tilling, planting or harvesting of agricultural, horticultural or forest crops or products, or engineering operations under § 21-2 (c) of the Code of Virginia.

(f) Any state agency that undertakes a project involving a land-disturbing activity shall file specifications or a conservation plan with the Commission for review and written comments. The Commission shall have sixty days in which to comment and such comment shall be binding on the state agency or the private business hired by the state agency. Individual approval of separate projects is not necessary when approved specifications are followed.

The state agency shall submit changes in the conservation plan or specifications as they occur to the Commission and shall submit specifications and plans at least annually for review.

Further, the state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

(g) For the purposes of subsections (a) and (b) of this section, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

§ 21-89.7. Approved plan required for issuance of grading, building, or other permits; security for performance. — Upon the effective date of the adoption of the conservation standards by the districts, counties, cities or towns, when standards have not otherwise been adopted, no agency authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may issue any such permits unless the applicant therefor submits with his application the approved erosion and sediment control plan or certification of such approved plan from the local plan-approving authority or from the Commission where appropriate, as well as certification that such plan will be followed. Such agency, prior to issuance of any permit, may also require from any applicant a reasonable performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the county, city or town at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by such approved plan as a result of his land-disturbing activity. Within sixty days of the completion of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

§ 21-89.8. Monitoring, reports and inspections. — (a) *Land-disturbing activities where permit is issued.* — With respect to approved plans for erosion and sediment control in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, either the permit-issuing authority or plan-approving authority shall provide for periodic inspections of the land-disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the permit. The owner, occupier or operator shall be given an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that the permittee has failed to comply with the plan, the authority shall immediately serve upon the permittee by registered or certified mail to the address specified by the permittee in his permit application a notice to comply. Where the plan-approving authority serves notice, a copy of each notice shall also be sent to the issuer of the permit. Such notice shall set forth specifically the measures needed to come into compliance with such plan and

shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he may be subject to revoction of the permit; furthermore, he shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by the article.

(b) *Other regulated land-disturbing activities.* — With respect to approved plans for erosion and sediment control in connection with all other regulated land-disturbing activities, the plan-approving authority may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections after notice to the resident owner, occupier or operator as are deemed necessary to determine whether the soil erosion and sediment control measures required by the approved plan are being properly performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land-disturbing activity. Such resident owner, occupier or operator shall be given an opportunity to accompany the inspectors. If it is determined that there is failure to comply with the approved plan, the plan-approving authority shall serve notice upon the person who is responsible for carrying out the plan at the address specified by him in his certification at the time of obtaining his approved plan. Such notice shall set forth the measures needed for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of the article and upon conviction shall be subject to the penalties provided by the article.

(c) *Additional provisions.* — Notwithstanding the above provisions of this section the following may be applied:

(1) Where a county, city, or town adopts the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the county, city, or town may designate one department to inspect, monitor, report and insure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.

(2) Where a district adopts the local control program and permit-issuing authorities have been established by a county, city, or town, the district by joint resolution with the applicable county, city, or town may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and enforcement.

(3) Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but is the commissioner of revenue or some other person, the county, city, or town shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections and enforcement unless such responsibilities are transferred as provided for in the above provisions of this section. (1973, c. 486.)

§ 21-89.9. Cooperation with federal and state agencies. — The districts, counties, cities or towns operating their own programs, and the Commission are authorized to cooperate and enter into agreements with any federal or state agency in connection with plans for erosion and sediment control with respect to land-disturbing activities. (1973, c. 486.)

§ 21-89.10. Appeals. — (a) Final decisions of counties, cities or towns under this article shall be subject to review by the court of record of the county or city, provided an appeal is filed within thirty days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

(b) Final decision of the districts shall be subject to an administrative review by the Commission, provided an appeal is filed within thirty days from the date of the written decision.

(c) Final decisions of the Commission either upon its own action or upon the review of the action of a district shall be subject to review by the Circuit Court of the City of Richmond, provided an appeal is filed within thirty days from the date of the written decision of the Commission. (1973, c. 486.)

§ 21-89.11. Penalties, injunctions and other legal actions. — (a) A violation under § 21-89.6 or § 21-89.8 of this article shall be deemed a misdemeanor and upon conviction shall be subject to a fine not exceeding $1,000 or 30 days imprisonment for each violation or both.

(b) The appropriate permit-issuing authority, a district, a county, city, or town operating its own program, or the Commission may apply to the court of record in the jurisdiction wherein the land lies, or to the Circuit Court of the City of Richmond should the land lie in more than one jurisdiction, for injunctive relief to enjoin a violation or a threatened violation under § 21-89.6 or § 21-89.8 of this article, without the necessity of showing that there does not exist an adequate remedy at law.

(c) The Commonwealth's attorney shall, upon request of a district, county, city, or town operating its own program, or the permit-issuing authority, take legal action to enforce the provisions of this article. The State Attorney General shall, upon request of the Commission, take appropriate legal action on behalf of the Commission to enforce the provisions of this article.

(d) Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages. (1973, c. 486.)

§ 21-89.12. Authorization for more stringent standards. — A district, county, city or town is hereby authorized to adopt more stringent soil erosion and siltation standards than those necessary to ensure compliance with the State's minimum standards, guidelines and criteria. However, nothing in this section shall be construed to authorize any district, county, city or town to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ 21-89.6 and 21-89.7. (1973, c. 486.)

§ 21-89.13. No limitation on authority of Water Control Board or Department of Conservation and Economic Development. — Nothing contained within the provisions of this article shall limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of this Code, or the powers or duties of the Department of Conservation and Economic Development as it relates to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.) and 17 (§ 45.1-198 et seq.) of Title 45.1 of this Code. (1973, c. 486.)

§ 28.1-23. *Authority to make regulations, establish licenses, and prepare fishery management plans; enforcement; penalty for violation of regulation.* — The Commission shall have authority to make such regulations as it deems necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the Commonwealth, including regulations as to the taking of seafood. The regulations shall not conflict with the provisions of statutory law.

The Commission shall have the power to establish a license commensurate with other licenses in an amount not to exceed $100 for any device used for the taking or catching of seafood in the waters of the Commonwealth when the device is not otherwise licensed in this title and when the device is used for commercial purposes.

§ 28.1-23.1. *Fishery management policy.* — It shall be the goal of fisheries management within the Commonwealth of Virginia to conserve and enhance finfish and shellfish resources, and to preserve and promote both commercial and recreational fisheries, and, thereby, to maximize food production and recreational opportunities. The marine resources of the Commonwealth shall be managed for their maximum benefit and long-term use by present and future generations. The fishery management plans prepared and implemented according to law shall also have as a goal the preservation of the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction.

Fishery management shall be based upon the best scientific, economic, biological and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement.

Any fishery management plan prepared, and any regulation promulgated to implement the plan, shall be consistent with the following standards for fishery conservation and management:

1. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. The "optimum yield" of a fishery means the amount of fish or shellfish which will provide the greatest overall benefit to the Commonwealth, with particular reference to commercial fishing for food production and to recreational fishing;

2. Conservation and management measures shall be based upon contemporaneous consideration of the best scientific, economic, biological and sociological information available;

3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout the territorial waters of the Commonwealth, and interrelated stocks of fish shall be managed as a unit or in close coordination;

4. Conservation and management measures shall not discriminate between user groups. If it becomes necessary to allocate or assign fishing privileges among various user groups, such allocation shall be (i) fair and equitable to all fishermen; (ii) reasonably calculated to promote conservation; and (iii) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges;

5. Conservation and management shall, where practicable, promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose;

6. Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches;

7. Conservation and management measures shall, where practicable, minimize regulatory burdens which inhibit innovation, expansion, and normal business operations. (1984, c. 463.)

§ 28.1-47. License to fish with certain nets. — Any resident of Virginia or nonresident desiring to take or catch fish with any device other than a hand line in any of the tidal waters of the Commonwealth, or tidal waters within the jurisdiction or under the joint jurisdiction of this Commonwealth, shall apply to any inspector except that the applicant for license to fish with a fixed device shall make application in writing to the inspector of the district in which the fixed device is proposed to be located, and state on oath the true name or names and address or addresses of the person or persons applying for license, the place at which the net, seine, fyke, weir, or other device is to be fished; and that during the period of the license, which shall be from January 1 to December 31, inclusive, of each year, they will not violate any of the laws of this Commonwealth in relation to the taking and catching of fish. (Code 1950, § 28-42; 1962, c. 406; 1983, c. 307.)

Cross references. — As to fishing in Pocomoke Sound and Tangier Sound, see § 28.1-128.1. As to fishing in Chesapeake Bay immediately west of Tangier Island, see § 28.1-128.2.

Law Review. — For article entitled, "Legal Dimensions of Entry Fishery Management," see 17 Wm. & Mary L. Rev. 757 (1976). For article discussing common-law principles underlying public interests in tidal water resources, see 23 Wm. & Mary L. Rev. 835 (1982).

§ 28.1-47.1. Special nonresident harvesters license. — Any nonresident desiring to take or catch finfish, crabs or any other seafood except oysters, clams or other shellfish, from any of the tidal waters of the Commonwealth for which a license is required and for which such nonresident is eligible, shall first pay to any district inspector or agent the sum of $350 for a nonresident harvesters license.The license shall be required of each boat used in the tidal waters of Virginia, and shall be in addition to any other licenses required for the activity involved. However, the total fee for a nonresident to engage in any fishing activity in Virginia's waters shall not be less than the total fee charged a Virginia resident to engage in like fishing activities in the state of residence of the nonresident.The nonresident shall state under oath his true name and address, the name and number of the boat being licensed, and that he will not violate any of the laws of this Commonwealth in relation to the taking and catching of seafood. A nonresident harvesters license shall be required and displayed to any inspector or agent prior to the purchase of any other license for the harvesting of seafood. A nonresident harvesters license shall be valid for one calendar year, and no part of the fee for the license shall be prorated. Revocation of this license in accordance with the provisions of § 28.1-36 of this Code shall constitute revocation of any other license held under the provisions of Title 28.1 of this Code by the named nonresident. Any resident of this Commonwealth who enters into a partnership or other agreement with the intent to defeat the object of this section shall be deemed guilty of a Class 1 misdemeanor. (1983, c. 299.)

Cross reference. — As to punishment for Class 1 misdemeanors, see § 18.2-11.

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

(a) On each pound net twenty-five dollars;

(b)(1) On each stake gill net of 1200′ in length or under, with a fixed location, $15;

(2) On all other gill nets up to 600′, $10; all such nets over 600′ and up to 1200′, $15;

(c) On each thresh net, skirt net, slat traps, prop nets, trap net, or similar device, eight dollars;

(d) On each fyke net head, weir, or similar device, eight dollars;

(e) On each person taking or catching eels or otherwise fishing by a means commonly known as fish pots, twelve dollars;

(f) On each person using or setting fish trotlines, twelve dollars. It shall be unlawful to set a fish trotline on the ocean side of Accomack and Northampton Counties. The Commission inspectors may confiscate any fish trotline set in such area;

(g) On each person using or operating a fish dip net, six dollars;

(h) On each haul seine used for catching fish, under 500 yards in length, $29; no person shall set a haul seine on Sunday in the Chesapeake Bay or its tributaries;

(i) On each haul seine used for catching fish, from 500 yards in length to 1000 yards in length, $88; no person shall set a haul seine on Sunday in the Chesapeake Bay or its tributaries.

(2) *Licenses for other devices.* — The Commission shall have the power to establish a license commensurate with other licenses in an amount not more than $100 for any device used for the taking or catching of finfish, fish or shellfish in the waters of the Commonwealth, that is not mentioned in Title 28.1 of the Code. The Commission shall have the authority to specify any restrictions or control over the device or the person operating the device they may deem advisable when issuing such a license.

(3) *Register mark and how displayed; length of seine.* — Inspectors issuing such licenses shall furnish to the person to whom such licenses are issued a number or register mark, to be placed by the fishermen on their boats or fixed fishing devices. It shall be unlawful for any person, firm, or corporation to use, operate, set or cause to be used, operated, or set, any such drift, or haul seine exceeding in length 1000 yards. If the license be for a fixed fishing device, the holder of the license shall fasten such register mark or number securely to one of the offshore stakes of the fishing device, but such device may be moved at any time within the same inspection district during the season for which the license therefor has been secured with the approval in writing of the inspector without the payment for any additional license. If the license be for a haul seine, drift net, purse net or similar fishing device, the holder of such license shall fasten the register mark number securely at a conspicuous place on the starboard side of the boat used in fishing such device. (Code 1950, § 28-43; 1960, c. 517; 1962, c. 406; 1966, c. 684; 1968, c. 748; 1972, c. 833; 1973, c. 21; 1976, c. 392; 1979, c. 274; 1981, c. 61; 1983, c. 307.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-49: Repealed by Acts 1970, c. 629.

Cross reference. — For present provisions covering the subject matter of the repealed section, see § 28.1-49.1.

§ 28.1-49.1. Size of fish that may be caught; purchase or possession of undersized fish. — Except as otherwise provided by regulation adopted pursuant to §§ 28.1-23 through 28.1-26 of this Code, it shall be unlawful for any person to take, catch or possess any sturgeon fish; cobia (bonita) which is less than twenty inches in length; or more than ten percent or two by count, whichever is greater, of summer flounder (fluke) less than twelve inches in length. Whenever any person has possession of more than 100 pounds in the aggregate of summer flounder, the taking, catching or possession of which is or might be unlawful due to their size, a lot of 100 pounds of such species may be separated by any inspector from the whole quantity thereof for purposes of determining whether more than 10% thereof are under the lawful size for purposes of this provision. If less than ninety percent are within the lawful size, such person shall be presumed guilty of having violated this provision. Measure of length for purposes of this section shall be from nose to tip of tail. Any sturgeon fish caught by any person or any fish below the lawful size herein provided shall be at once returned to the water.

It shall be unlawful for any dealer or wholesaler of fish for human consumption to buy from others or to otherwise possess for purposes of resale any fish, the taking, catching or possession of which is unlawful, or to possess for purpose of resale any fish, the taking, catching or possession of which is unlawful due to the size thereof, as provided herein, unless in the latter case at least ninety percent of the fish of each type mentioned herein are of a lawful size. Whenever a dealer or wholesaler of fish has possession of more than 100 pounds in the aggregate of any variety or species, the taking, catching or possession of which is or might be unlawful due to their size, a lot of 100 pounds of each species or variety may be separated by any inspector from the whole quantity thereof for purposes of determining whether less than 90% thereof were under or over the lawful size for purposes of this provision. If less than ninety percent are within the lawful size the dealer or wholesaler shall be presumed guilty of having violated this provision, if the fish were bought from others or otherwise possessed for purposes of resale. (1970, c. 629; 1981, c. 579; 1984, c. 13; 1985, cc. 546, 615.)

The 1984 amendment, in the first sentence of the first paragraph, inserted "or" preceding "summer flounder," deleted "unless obviously injured or dead" from the end of the last sentence of the first paragraph, in the last sentence of the second paragraph substituted "the dealer" for "such dealer" and substituted "the fish" for "such fish," and in the former third paragraph substituted "Commonwealth" for "State."

The 1985 amendments. — The first 1985 amendment in the first sentence of the first paragraph substituted "take, catch or possess" for "take or catch and retain possession of"; in the first sentence of the second paragraph substituted "taking, catching or possession" for "taking or catching and retention or possession" and substituted "taking, catching or possession" for "taking or catching or retention or possession"; in the second sentence of the second paragraph substituted "taking, catching or possession" for "taking or catching and retention or possession" and inserted "by any inspector"; deleted the former last sentence of the second paragraph, which read "The provisions of this section shall not apply to persons in the conduct of a retail seafood business"; and deleted the third paragraph, which read "The provisions of this section shall apply only to the tidal waters of the Commonwealth which are under the jurisdiction of the Marine Resources Commission."

The second 1985 amendment, effective April 3, 1985, inserted "more than ten percent or two by count, whichever is greater, of" and deleted "which is" preceding "less than twelve" near

§ 28.1-50. Taking, etc., channel bass and rockfish; confiscation of such fish illegally taken. — Except as otherwise provided by regulation adopted pursuant to §§ 28.1-23 through 28.1-26 of this Code, it shall be unlawful for any person, firm or corporation to take, catch, and/or have in possession, offer for sale or transport during any one day more than two channel bass (red drum) over thirty-two inches in length or more than two rockfish (striped bass) over forty inches in length or more than five percent or two by count, whichever is greater, of any rockfish (striped bass) of less than fourteen inches in length. All such measurements are to be from tip of nose to tip of tail.

Any person, taking or catching more than two channel bass over thirty-two inches in length or more than two rockfish over forty inches in length or more than five percent or two by count, whichever is greater, of any rockfish (striped bass) of less than fourteen inches in length, shall immediately release and return such fish to the water at the place where the fish were taken or caught.

Any person, firm or corporation who has more than two of either such fish over the legal maximum size or more than five percent or two by count, whichever is greater, of any such fish under the legal minimum size in their possession, during any one day, shall be deemed guilty of violating the provision of this section. Any inspector who finds more than two such fish over the legal maximum size or more than five percent or two by count, whichever is greater, of any such fish under the legal minimum size in the possession of any person, firm or corporation shall immediately confiscate such fish.

Every game warden and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this section. (Code 1950, § 28-45.01; 1960, c. 517; 1962, c. 406; 1966, c. 294; 1968, c. 748; 1981, c. 579.)

§ 28.1-51. Size of mesh and length and depth of certain nets; pound net, haul seine and shallow water defined. — It shall be unlawful for any person to use a pound net, head, or picket, or mullet net (that is under 200 yards long) having a smaller mesh than 2", stretched measure, after having been tarred, for the purpose of catching food fish. Nor shall any haul seine or mullet net be longer than 1,000 yards in length and if over 200 yards long, shall not have mesh less than 3", stretched measure, and no mullet net shall be deeper than 40 meshes, provided, further, that no license shall be issued to set a pound net or other fixed fishing device on an established and presently used haul seine stand, except that this provision shall not affect a pound net stand presently licensed as such.

Any net having a funnel mouth, round mouth, or square mouth, with head exposed above water, shall be construed as a *"pound net."* A *"haul seine"* is any net set out from the shore or shallow water. The term *"shallow water"* as used herein shall mean any waters not exceeding eight feet in depth at mean low tide. Every haul seine shall have one and the same end stationary at all times while the seine is being used, except when closing the net the stationary end may be changed. (Code 1950, § 28-46; 1962, c. 406.)

§ 28.1-51.1. Use of certain fishing devices in certain waters. — It shall be unlawful for any person to use any snatch hook, grab hook or gang hook for the purpose of taking or catching fish in the Rappahannock River below the Downing Bridge at Tappahannock, between January 1 and March 15 of each year. The provisions of this section are applicable to both residents and

nonresidents. Nothing in this section shall apply to any licensed fixed fishing device. (1968, c. 748; 1976, c. 200; 1982, c. 632.)

§ 28.1-51.2: Repealed by Acts 1976, c. 47.

§ 28.1-52. Length of fishing structures. — No single fishing structure shall have a total length greater than 1,200', except in waters on the Eastern Shore south of the entrance to Eastern Bay, where the allowable lengths of single structures shall be not more than 1,800'. Between successive fishing structures in the same row, clear and unobstructed intervals of at least 200' shall be maintained, and adjoining rows of fishing structures shall be at least 300 yards apart. In addition, a clear passageway at least 200' wide shall be maintained, reaching from all regular navigable channels to all established boat landings. All stakes shall project not less than four feet above the surface of the water of all stages of the tide. Any stake not complying with this condition shall be withdrawn.

No net shall be placed within 300 yards of the side or end of any fixed fishing device, unless in the same row. (Code 1950, § 28-46.1; 1954, c. 215; 1962, c. 406; 1964, c. 393; 1974, c. 97.)

§ 28.1-52.1: Expired.

Editor's note. — This section, which was enacted by Acts 1974, c. 434, expired by its own terms December 31, 1974.

§ 28.1-52.2. Commercial fishing pier. — A. An annual license fee in the amount of fifty dollars shall be charged for each commercial fishing pier that is over or upon the subaqueous beds of the Commonwealth.

B. No net fishing shall be permitted within 300 yards of the sides or end of a commercial fishing pier; provided, however, the Commission may decrease this distance if, in the opinion of the Commission, 300 yards is considered to be an excessive distance because of the size of the body of water where the pier is located.

C. The construction or erection of a commercial fishing pier on a subaqueous bed of the Commonwealth shall be subject to the permit requirements of § 62.1-3.

D. For purposes of this section, a commercial fishing pier shall be any pier that is open to the public and used primarily to fish from the pier for a fee; provided, however, that a pier operated by a political subdivision that is open to the public to fish from the pier shall be considered to be a commercial fishing pier although no fee is charged.

The provisions of this section may be enforced by any law-enforcement officer of the Commonwealth or the political subdivision in which the pier or any part thereof is located. (1976, c. 343; 1979, c. 274.)

§ 28.1-53. Distance nets may extend across body of water or channel. — It shall be unlawful to set or fish any net or nets across any river, bay, estuary, creek, or inlet which are longer than one-fourth the width of said body of water from mean low water to mean low water at the point where said net or nets are set or fished. Said net or nets shall not be set or fished more than one-half the distance across the channel of said river, bay, estuary, creek or inlet.

Every game warden and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this section. (Code 1950, § 28-47; 1950, p. 981; 1962, c. 406; 1968, c. 748.)

§ 28.1-54. **Concealing name or number of vessel; carrying patent tongs, etc., while fishing for menhaden.** — If any captain, master, or owner cover or conceal, or permit to be covered or concealed, the name or number of any vessel for the catching, or taking, or conveying of fish, oysters, clams, scallops, or crabs, or shall carry or permit to be carried aboard his vessel when employed in fishing for menhaden any scrape, dredge, or patent tongs, he shall upon conviction thereof be guilty of a misdemeanor. (Code 1950, § 28-49; 1962, c. 406.)

§ 28.1-55. **Killing fish by means of explosives, drugs or poisons.** — It shall be unlawful to kill any species of fish by means of explosives, drugs, or poisons at any time in any of the waters of the Commonwealth or in any of the waters under its jurisdiction. (Code 1950, § 28-53; 1962, c. 406.)

§ 28.1-56. **Possession or sale of fish taken by means of explosives, drugs or poisons.** — It shall be unlawful to have in possession, or to sell or offer to sell, within the Commonwealth, any fish killed or captured by means of explosives, drugs or poisons, whether the same were so killed or captured within or without the jurisdiction of Virginia. (Code 1950, § 28-54; 1962, c. 406.)

§ 28.1-57: Repealed by Acts 1983, c. 307.

§ 28.1-57.1: Repealed by Acts 1974, c. 434.

Article 2.

Fish for Manufacture Into Fish Meal, Oil, etc.

§ 28.1-58. **Food fish not to be taken, bought, or sold for manufacture into fish meal, oil, etc.; percentage allowable.** — It shall be unlawful to take, catch or round up with purse net, for the purpose of manufacture into guano, fish meal, or oil or buying or selling for such purpose, food fish, to an amount greater than one percent of the whole catch without immediately opening the net and turning loose any such food fish while yet alive; or for any steamer or any other vessel licensed for the purpose of menhaden fishing to catch any food fish for the purpose of marketing the same; or for any person, firm or corporation to have in its possession food fish, to a greater amount than one percent of the bulk for the purpose of manufacturing them into guano, fish meal, or oil, or for any person to use in any manner any food fish, to a greater amount than one percent of the bulk for the purpose of fertilizing or improving the soil.

Any person, firm or corporation and/or any captain or master of any vessel violating any provisions of this section or having in possession more than one percent of food fish, among menhaden caught for the purpose of manufacturing into guano, fish meal, or oil, or buying or selling the same for such purpose, shall upon conviction of violating any provision of this section be guilty of a misdemeanor, and the license on such person's boat or net shall be revoked by court order for the remainder of the season. (Code 1950, § 28-60; 1962, c. 406; 1964, c. 393; 1966, c. 696.)

§ 28.1-59. **License to take fish with purse nets; excepted waters.** — (1) Any person, firm or corporation entitled by law to fish in any of the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, desiring to take or catch fish known as menhaden with purse nets for the

purpose of manufacturing them into oil, fish scrap, fish meal or guano, or for any other purpose, shall first obtain a license therefor, and shall pay to the inspector a specific license tax, which shall be in lieu of all taxes levied upon such person, firm or corporation for taking and catching fish with purse nets, or for selling the products thereof, as follows:

(a) On each sail vessel fishing with purse nets of not more than 400 meshes deep, $21.50;

(b) On each sail vessel fishing with purse net of more than 400 meshes deep, $75;

(c) On each power boat or steam vessel under 70 gross tons fishing with purse net, $3 per gross ton, but not more than $150, and for such vessels over 70 gross tons fishing with purse net $5 per gross ton, provided the maximum license fee for such vessels shall not be more than $600;

(d) On each power boat or steam vessel of not over twenty horsepower, fishing with purse net, thirty-seven dollars and fifty cents.

Such inspector shall thereupon grant a license to use such net or other device, and state in such license the name or names of the person or persons who shall use the same, and the amount of tax as prescribed by law; and the term for which such license is granted shall begin on January 1 in any year and end on December 31 of the same year.

It shall be lawful for a resident of this Commonwealth, except such persons, firms or corporations as may be engaged in the taking or catching of fish known as menhaden for the purpose of manufacturing the same into oil, fish scrap, fish meal or guano, to employ any vessel or net owned within or without this Commonwealth for the purpose of taking and catching fish.

(2) [Repealed.]

(3) Except as provided in subsection (4) of this section, no license granted under the provisions of this section shall be deemed to authorize fishing in the following waters, wherein it shall be unlawful to fish in the manner and for the purpose set forth in paragraph (1) of this section:

(a) In the Piankatank River and its tributaries above and west of a line beginning at the northernmost (as measured from the low-water mark) edge of land known as Gwynn's Island at or near the mouth of Kibble Pond, thence in a northerly direction in a straight line to the easternmost edge of highland on Stingray Point; and

(b) In the Rappahannock River and its tributaries above and west of the R. O. Norris, Jr. Bridge; and

(c) In the York River and its tributaries above and west of a line extending northwardly from the western line of Goodwin Islands through the western line of Ellen Island to the northern bank of the York; and

(d) In the East, North, Ware and Severn Rivers and their tributaries; and

(e) In Cape Charles harbor eastward of line from the western tip of the jetty on the southern side of the channel to the westernmost tip of the jetty on the northern side of the channel; in Kings Creek and Cherrystone inlet eastward of a line from the western end of the jetty on the north side of Cape Charles harbor to the southern end of Wescoat Point; in Mattawoman and Hungars Creek eastward of a line from the northwesternmost tip of land in Old Town Neck to Great Neck Point; in Nassawadox Creek eastward of a line from Shooting Point to Nassawadox Point; in Occohannock Creek eastward of a line from Sparrow Point to the southernmost tip of Powells Bluff; in Nandua Creek eastward of a line from the northernmost point of Milbys Point to the southwesternmost point of land in Hacks Neck, said line having a true bearing of 027°; in Pungoteague Creek eastward of a line from Bluff Point to the southeasternmost point of Finneys Island; in Onancock Creek eastward of a line from Thicket Point to Ware Point; in Chesconessex Creek eastward of a line from the northernmost point of Sound Beach to the northwesternmost

point of Beach Island; in Deep Creek, Hunting Creek and Guilford Creek eastward of a line from the easternmost tip of Russel Island to Halfmoon Point to Peters Point to Simpson Point to Flood Point to Ebb Point to the mouth of Great Gut; in Messongo Creek eastward of a line from South Point to North Point in the Virginia portion of the Pocomoke River northeast of a line from Long Point to Virginia-Maryland spar buoy "A"; in the Great Wicomico River from the mouth of Whay's Creek to Sandy Point; in Dividing Creek, Prentice Creek and Jarvis Creek westward of a line from Hughlett Point to Jarvis Point; in Indian Creek and Henrys Creek westward of a line from the southeasternmost point of land on the eastern side of the mouth of Henrys Creek to the easternmost point of Fleets Bay Neck; in Dymers Creek westward of a line from the southernmost point of Grog Island to the easternmost point of Poplar Neck; in Tabbs Creek westward of the line across the mouth of the creek at its narrowest point; in Horn Harbor and Dyer Creek westward of a line from the southernmost tip of Beach Point to the northernmost point on the south side of the mouth of Dyer Creek; in Back Creek, Clarkston Creek, Chisman Creek, Poquoson River, Bennett Creek, and adjacent waters westward of a line from the southeasternmost point of Goodwin Islands to the westernmost point of Cow Island; in Back River westward of a line from Plumtree Point to the westernmost point of Northend Point; in Little Creek southward of a line from the north point of the west jetty to the north point of the east jetty; in Lynnhaven Bay southward of the Lynnhaven Inlet Bridge on U.S. Route 60.

(4) Only during the period from the third Monday in May through the third Friday in November, licenses granted to vessels under seventy gross tons in accordance with subsection (1) (c) of this section shall in addition authorize fishing in the following waters: in the Rappahannock River eastward and southward from a line extending from Towles Point to Burnham Wharf and from Orchard Point to Towles Point; in Dividing Creek eastward from a line extending from Jarvis Point to Ditchley Pump House; in Indian Creek eastward from a line directly across the creek at Rappahannock Oyster Company; in Dymers Creek eastward from a line directly across the creek at the eastern end of Standard Products dock. (Code 1950, § 28-61; 1960, c. 517; 1962, c. 406; 1966, c. 695; 1974, c. 313; 1978, cc. 347, 358; 1979, c. 274; 1980, c. 605; 1982, c. 461.)

Cross reference. — As to season for vessels of less than 70 gross tons to take or catch menhaden for purposes other than use as fish meal or oil, see § 28.1-65.1.

§ 28.1-60. Nonresidents generally. — (1), (2) [Repealed.]

(3) *License for taking menhaden fish.* — A nonresident person, firm or corporation may take or catch the fish known as "menhaden," for the purpose of converting the same into oil, fish scrap, fish meal or guano; provided such person, firm or corporation has applied for and obtained license to take and catch such fish and in accordance with the following requirements.

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

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

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

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

Should the Commissioner of Marine Resources be fully satisfied that the statements set forth in the affidavit are true and bona fide he shall then grant a license to such applicant, upon the applicant's payment of the same license fee as set forth for residents in § 28.1-59.

(5) *Service of process.* — Every such licensee shall by written power of attorney appoint the Secretary of the Commonwealth and his successors in office, its agent, upon whom shall be served all lawful process against or notice to, such licensee, and who shall be authorized to enter an appearance in his behalf. The service shall only be made upon the Secretary of the Commonwealth, or, in his absence, upon the person in charge of his office, and shall be made in duplicate. A copy of such power of attorney, duly certified and authenticated shall be filed with the Secretary of the Commonwealth, and copies thereof duly certified by him shall be received as evidence in all the courts of this State. No judgment shall be entered against the licensee until after the process has been served as set forth for at least ten days.

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

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

(6) *Penalty for violation.* — Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (Code 1950, § 28-62; 1962, c. 406; 1976, c. 384; 1978, c. 347.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

Law Review. — For survey of constitutional law for the year 1976-77, see 63 Va. L. Rev. 1385 (1977). For article, "State Management of Marine Fisheries After the Fishery Conservation and Management Act of 1976 and Douglas v. Seacoast Products, Inc.," see 19 Wm. & Mary L. Rev. 17 (1977).

Discrimination against nonresident corporations under former section. — Since, under this section prior to the 1978 amendment, licenses were granted to Virginia domestic and resident corporations but refused nonresident corporations, there was discrimination in contravention of the Fourteenth Amendment assurance of equal protection of the laws. Seacoast Prods., Inc. v. Douglas, 432 F. Supp. 1 (E. D. Va. 1975), aff'd, 431 U.S. 265, 97 S. Ct. 1740, 52 L. Ed. 2d 304 (1977).

This section and repealed § 28.1-81.1 were preempted by the federal Enrollment and Licensing Act. Insofar as these sections subjected federally licensed vessels owned by nonresidents or aliens to restrictions different from those applicable to Virginia residents and American citizens, they must fall under the supremacy clause. Douglas v. Seacoast Prods., Inc., 431 U.S. 265, 97 S. Ct. 1740, 52 L. Ed. 2d 304 (1977), decided under this section as it stood before the 1978 amendment.

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

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

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

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

(b) [Repealed.]

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

(d), (e) [Repealed.]

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

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

(4) [Repealed.] (Code 1950, § 28-63; 1962, c. 406; 1966, c. 684; 1978, c. 347.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-62. Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority to inspectors; appeals from actions of inspectors. — Should the Commissioner of Marine Resources be satisfied that the disclosures required by § 28.1-61 have been duly made, and that the application conforms in other respects to the provisions of said section, and upon payment of the license tax specified in § 28.1-59 the inspector through whom, or in whose district the application was made shall issue to the applicant a license for each of the purse nets, seines, vessels, steamers, or other watercraft specified in the application, which license shall state the name of the licensee and the name of the vessel, steamer, or other watercraft licensed.

If any vessel, steamer, or other watercraft so licensed becomes disabled for use during the period of such license, the licensee may, with the consent of the

Commissioner of Marine Resources, hire or charter a vessel, steamer, or other craft belonging to a nonresident to take the place of the one so disabled for the unexpired period of such license; in which case the inspector shall transfer the license issued for the disabled vessel, steamer, or other craft to the one so hired or chartered without requiring any additional license therefor, for which transfer the fee shall be one dollar.

The Commissioner of Marine Resources may delegate to the various inspectors so much or all of his authority under this section as he may deem expedient; provided, however, that any person, firm, or corporation aggrieved by any action of any inspector exercising such delegated authority shall have the right to appeal to the Commissioner of Marine Resources for a review and correction of the actions of such inspector. Such appeal may be made by mailing a statement of the inspector's action, together with the appellant's objections thereto and his grounds for such objections to the Commissioner of Marine Resources at the office of the Marine Resources Commission. Upon receipt of such appeal, the Commissioner of Marine Resources shall forthwith notify the oyster inspector involved, who shall, within three days, deliver to the Commissioner of Marine Resources all papers in his possession concerning the subject matter of the appeal, together with a written statement of his actions in the premises and the grounds therefor. The Commissioner of Marine Resources shall issue his ruling granting, transferring, refusing, or refusing to transfer the license or licenses involved within ten days after the receipt by him of such appeal. (Code 1950, §§ 28-64, 28-65; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-63. Appeals from actions of Commissioner. — Any person, firm, or corporation aggrieved by any action of the Commissioner of Marine Resources taken under the provisions of § 28.1-62 shall have the right to petition the circuit court of the county, or the corporation court of the city, in which is located the factory where the fish were to be manufactured, or in which the applicant resides or has its principal office for a review and correction of the ruling of the Commissioner of Marine Resources as provided in Chapter 2 (§ 28.1-23 et seq.) of this title. (Code 1950, § 28-64; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-64. Penalty for violation of §§ 28.1-61 through 28.1-63; forfeiture of fishing gear, etc. — If any person, firm or corporation use or employ any purse net, seine, vessel, steamer or other craft for the purpose of taking and catching fish in the waters of this Commonwealth, or in the waters within its jurisdiction, or in waters under its joint jurisdiction, to be manufactured into oil, fish scrap, fish meal, or guano, or permit the same to be used or employed by another for such purposes, without first obtaining a license therefor as hereinabove provided; or if any person swear falsely in making application for the certificate aforesaid, or otherwise violate any of the provisions of §§ 28.1-61 to 28.1-63 such person, firm or corporation shall be guilty of a misdemeanor.

Any net, pot, or other fishing device or gear used in the violation of any of the provisions of §§ 28.1-61 through 28.1-63 shall be forfeited to the Commonwealth, such forfeiture to be enforced under the provisions of Chapter 8 (§ 28.1-184 et seq.) of this title. Any property seized under authority of this article shall be held to await the proceedings of information prescribed by such chapter; and upon such seizure being made, the officer or other person making the same shall forthwith give notice thereof to the Commonwealth's attorney whose duty it is to file such information. (Code 1950, § 28-66; 1962, c. 406; 1981, c. 525.)

§ 28.1-65. Closed season for menhaden fishing; forbidden nets. — Except as provided in § 28.1-65.1, it shall be unlawful for any person, firm, or corporation to take or catch with a purse net or purse seine in the waters of this Commonwealth, or waters within its jurisdiction, menhaden fish to be manufactured into fish meal, oil, or guano or for any other purpose, between the day following the third Friday of November and the day preceding the third Monday in May of each year; and it shall also be unlawful for any person, firm or corporation to use in said waters for the purpose of taking or catching menhaden fish for the purpose aforesaid any purse net or other net having, when made, a stretched mesh of less than 1¾", provided, however, that on and after the third Monday in May, 1979, it shall be unlawful for any person, firm or corporation to use any purse net or other net for the aforesaid purposes having a stretched mesh of less than 1¾". Any person, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor. (Code 1950, §§ 28-64, 28-67; 1962, c. 406; 1966, c. 684; 1972, c. 424; 1976, c. 384; 1978, c. 347; 1982, c. 461.)

§ 28.1-65.1. Season for vessels of less than seventy gross tons to take or catch menhaden for purposes other than use as fish meal or oil. — From the first Monday of March to, but not including, the third Monday of May, it shall be lawful for vessels with a gross weight of less than seventy tons to take or catch with purse net menhaden for purposes other than use as fish meal or oil. (1982, c. 461.)

§ 28.1-66. Processing of herring which is unfit for human consumption. — Notwithstanding any other provision of this article, any person catching herring in pound nets, dip nets, haul seines, and other similar nets, excluding trawl and purse nets, may sell such herring to be manufactured into fish meal, fish oil, or guano, provided that said herring is or has become unfit for human consumption or for processing into food for human consumption. Any manufacturer purchasing said herring which is or has become unfit for human consumption or for processing into food for human consumption, may manufacture said herring into fish meal, fish oil, or guano. (1962, c. 406.)

Article 3.

Trolls, Trawl Nets and Drag Nets.

§ 28.1-67. Trolls, trawl nets and drag nets prohibited. — Except as may be provided in § 28.1-69.1 of this Code, it shall be unlawful for any person, firm or corporation to operate, for the purpose of taking or catching fish, a troll or trawl net, drag net, or similar device drawn through the waters by a vessel, boat, or other craft in any waters of the Commonwealth, or waters under the jurisdiction of the Commonwealth, except a regular licensed haul seine, autho-

rized by law; or to buy, sell, or offer for sale any fish taken or caught in the waters of the Commonwealth, or under the jurisdiction of the Commonwealth, with a troll or trawl net, drag net, or similar device. (Code 1950, § 28-68; 1962, c. 406; 1973, c. 119; 1979, c. 18.)

§ 28.1-68. Trawling boat not granted license for other fishing device. — No vessel, boat or other craft shall have a license for any other net or fishing device granted to be used or employed on a boat equipped for trawling, and having thereon a trawl net, except as hereinafter provided. (Code 1950, § 28-69; 1962, c. 406.)

§ 28.1-69: Repealed by Acts 1979, c. 18.

Cross reference. — For present section covering the subject matter of the repealed section, see § 28.1-69.1.

§ 28.1-69.1. Fishing with trawl net within three-mile limit. — A. It shall be unlawful to catch fish within the three-mile limit of the Virginia Atlantic shoreline with trawl nets or similar devices. However, the Marine Resources Commission may issue licenses to residents or nonresidents to trawl within such three-mile limit from Cape Charles north to the Maryland line, except the months of September and October and from 36° 40′ north latitude south to the North Carolina line at any time, and from Cape Henry south to 36° 40′ north latitude between October 1 and May 1 of each year.

B. The Commission, whenever it deems it advisable to do so to protect or promote the fisheries, may close and open the area, or any part thereof, described in paragraph A hereof for trawling or restrict the manner, method, size, and season of catch.

C. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority. (1979, c. 18; 1981, c. 52; 1983, c. 307.)

§ 28.1-70. License fee. — A license to fish in the area with a trawl net or similar device may be granted upon payment of a fee of $100 per annum for each boat so employed, and no part of this fee will be refunded should the area be closed at the order of the Commissioner. (Code 1950, § 28-71; 1960, c. 517; 1962, c. 406; 1974, c. 85; 1979, cc. 18, 274.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-71. Prima facie evidence of violation. — The finding of any vessel, boat, or other craft in the waters of the Commonwealth, or in the waters under the joint jurisdiction of the Commonwealth, equipped for trolling, or trawling, having a trawling net, drag net, or a similar device aboard with fresh or live fish on deck or in the hold thereof, or in any portion of such vessel, boat or craft, shall be prima facie evidence that the operator or operators and master and members of the crew of the vessel, boat or other craft are guilty of trolling or trawling. (Code 1950, § 28-72; 1962, c. 406.)

§ 28.1-72. Exemption from article. — Nothing in this article shall be construed as prohibiting the transportation of fish caught by means of troll or trawl net outside of the territorial limits of Virginia and troll or trawl nets used incident thereto, into Virginia ports to be placed upon the market. (Code 1950, § 28-75; 1962, c. 406.)

§ 28.1-72.1. Forfeiture of fishing gear, etc. — Any net, pot, or other fishing device or gear used in the violation of any of the provisions of this article shall be forfeited to the Commonwealth, such forfeiture to be enforced under the provisions of Chapter 8 (§ 28.1-184 et seq.) of this title. Any property seized under authority of this article shall be held to await the proceedings by information prescribed by such chapter; and upon such seizure being made, the officer or other person making the same shall forthwith give notice thereof to the Commonwealth's attorney whose duty it is to file such information. (Code 1950, § 28-75; 1962, c. 406; 1981, c. 525.)

Article 4.

Marking of Boats, Nets and Other Devices; Restrictions in Certain Waters.

§ 28.1-73. License plates or tags generally. — It shall be the duty of the Marine Resources Commission to provide metal license plates or tags when required by statute or regulation, of such design or designs, with such letters and/or figures stamped or painted thereon, as may be deemed necessary or proper by the Commission. (Code 1950, § 28-76; 1962, c. 406; 1966, c. 684.)

Cross references. — As to fishing in Pocomoke Sound and Tangier Sound, see § 28.1-128.1. As to fishing in Chesapeake Bay immediately west of Tangier Island, see § 28.1-128.2.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-74. Inspectors to distribute license plates or tags; duty to attach to boats, nets or other devices. — Such metal license plates or tags shall be furnished by the Marine Resources Commission to the various inspectors, who shall furnish the same to such licensee who is required by statute or regulation to attach and display such metal license plate or tag. If the license be for a haul seine or purse net, the licensee shall securely attach and display the metal license plate at a conspicuous place on the starboard side of the boat used in fishing such device. If the license be for a pound net, fyke net, gill net of any type, drift net or other similar device, for the taking of fish, the licensee shall securely attach and display the metal license plate on one of the offshore stakes or buoys of the fishing device. Each of the aforesaid nets set in the water shall be marked by a buoy or stake easily visible on the surface which shall display the metal license plate which was issued by the inspector. Any of the aforesaid nets in the water not identified in this manner may be seized by a duly authorized inspector to be held for any forthcoming legal proceeding. (Code 1950, § 28-77; 1962, c. 406; 1964, c. 393; 1966, c. 684.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-75: Repealed by Acts 1966, c. 684.

§ 28.1-76. Penalty for failure to attach plate or tag or for permitting its removal. — Any person, licensed to engage in the fish or shellfish business in this State, who shall fail or refuse to properly attach such metal plate or tag to the boat, pound net, fyke net or gill net for which he has procured a license, or who shall remove or suffer the same to be removed from such boat, pound net, fyke net, gill net or other device, shall be guilty of a misdemeanor. (Code 1950, § 28-78; 1962, c. 406.)

§ 28.1-77. Duty to apply for new plate or tag in case of loss. — Should such metal plate or tag be removed or destroyed by accident or by the force of the sea, or in any other casual manner, it shall be the duty of the person holding the license to operate, conduct and maintain such boat, haul seine, pound net, fyke net, purse net and other device to at once apply to the inspector of the district in which such boat, haul seine, pound net, fyke net, or other device is located to issue to him a new plate or tag, which application must be made within twenty-four hours after the discovery of the destruction or loss of the original plate or tag; and any person failing so to do for twenty-four hours after the discovery of the loss of any such plate or tag shall be guilty of a misdemeanor. (Code 1950, § 28-79; 1962, c. 406.)

§ 28.1-78. Exemptions from article. — Nothing contained in this article shall be construed to apply to boats used purely for pleasure purposes, or for the taking of fish or shellfish for family use only by rod and line or with hand lines. (Code 1950, § 28-80; 1962, c. 406.)

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

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

The Commission may revoke any or all fishing licenses issued to such person, firm or corporation, as set forth in § 28.1-36, if abandoned poles or stakes are not promptly removed. If any person, firm or corporation fails to remove such poles or stakes, he shall be guilty of a misdemeanor and punished as provided in § 18.2-12 of the Code of Virginia. The person, firm or corporation responsible for removal of such poles or stakes shall be the person, firm or corporation who held the last license for such fishing device. (1962, c. 406; 1964, c. 393.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-80. Chickahominy river in Charles City County. — It shall be unlawful for any person, firm, corporation, or association to take or catch fish or shellfish, on or within 500 yards below the Chickahominy Dam at Walker's, on the Chickahominy river, in Charles City County, Virginia, other than with rod and reel and hand line. (Code 1950, § 28-88.4; 1950, p. 471; 1956, c. 325; 1962, c. 406.)

§ 28.1-81. Rappahannock river and certain of its tributaries. — It shall be unlawful for any person, firm or corporation to use any haul seine within 100 yards of mean low-water mark, or 3' of water in depth at mean low water, whichever shall be closer to the shore, or over any oyster ground held under lease from the Commonwealth and marked as required by law in the waters of the Rappahannock River east of Downing Bridge at Tappahannock, and in its tributaries east of Downing Bridge. The restriction hereinabove set forth as to hauling seine within a certain number of feet of shore or in water of a certain depth shall be inapplicable where the unrevoked written consent of the adjacent landowner has been obtained. (Code 1950, § 28-89; 1962, c. 406.)

Taking Oysters Generally.

§ 28.1-82. Season for taking oysters from public rocks. — A. The season for taking oysters from the natural, or public oyster beds, rocks, or shoals in any of the waters of this Commonwealth shall be as follows:

By shaft tongs or by hand:

(1) James River seed area, from October first until July first; the Commission may, however, set an alternate date, no earlier than June first, for the completion of this season in any year in which such an action can be expected to improve the quality of seed oysters.

(2) [Repealed.]

(3) All other areas of the waters of the Commonwealth, from October first until June first.

By patent tongs:

(1) [Repealed.]

(2) Anywhere in the Commonwealth where patent tongs are not prohibited, from October first to March first; the Commission may, however, set an alternate opening date, no later than November first, for any area in the State where the use of patent tongs is permitted, when in its opinion the condition of the oyster warrants.

It shall be unlawful for any person to take or catch oysters from any of the natural, or public rocks, or shoals of this Commonwealth at any time other than that provided above except the date for removal of shellfish from restricted areas as set forth in Chapter 7 (§ 28.1-175 et seq.) of this title and except as provided in §§ 28.1-85 and 28.1-85.1. The having of patent tongs and oysters in a boat at any time other than the season for patent tongs as specified above, shall constitute prima facie evidence of violating this section.

If any person be found upon the natural, or public rocks, beds or shoals of this Commonwealth taking oysters or with tongs or other device for taking or catching of oysters other than during the season listed above, it shall constitute prima facie evidence of violation of this section.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority. (Code 1950, § 28-92; 1962, c. 406; 1964, c. 393; 1970, c. 726; 1977, c. 387; 1978, c. 208; 1980, c. 32; 1981, c. 72.)

§ 28.1-83. Prohibited area for patent tongs. — It shall be unlawful for anyone to use or employ patent tongs for the purpose of taking or catching oysters from the natural or public rocks, beds or shoals of the Commonwealth in the following areas:

(1) In the Piankatank River and its tributaries above a line beginning at the extreme westernmost point on a wooden jetty (point "A") on the south property line of lot 9-A owned by E. B. Bottom and lot 8-A of Gwynn's Island Estate subdivision, Mathews County (Deed Book 55; page No. 279), said point located north 57° 07', west 176.00 feet from the east side of said lot 8-A and 9-A. Said point is located on the extreme northwest section of Gwynn's Island known as Cherry Point, Mathews County; thence 71° 00' west approximately 10,140 feet, to a survey point known as the Stove R, located on the extreme south end of Stove Point, Middlesex County; thence north 38° 00' east approximately 14,960 feet to point "X," or the east gable of hotel, located on the extreme easternmost point of Stingray Point, Middlesex County. This area is to include all of Piankatank River and its tributaries from Cherry Point of Gwynn's Island to Stove Point in Middlesex County, and all of the area of Jackson Creek and its tributaries from Stove Point to Stingray Point;

(2) In the Rappahannock River and its tributaries, above a line drawn from the southernmost point of Belle Island, which line begins at latitude 37° 46′ 37″ north, longitude 76° 35′ 40″ west; thence south 27° 47′ 25.82″ west 14,292.65 feet to the easternmost point of Punchbowl Point, which is located at latitude 37° 44′ 32″ and longitude 76° 37′ 03″ west; provided that in the area of the Rappahannock where the use of patent tonging is permitted, the Commission shall have authority to close or open such area, or any part, for patent tonging, and restrict or limit the manner, method, and amount of harvest in such area. In the exercise of its authority granted pursuant to this paragraph, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority;

(3) Beginning on the south shore of the James River at Pig Point, located at the east mouth of Nansemond River opposite the westernmost tank of two tanks on Pig Point; thence in a northerly direction to a light at the extreme north end of abandoned Pig Point pier; thence in a northerly direction to a fish trap buoy designated as N "H11" located on the northeast side of the Fish Trap Reservation; thence in a northwest direction along the northeast boundary of the Fish Trap Reservation along a line of buoys designated as C "1" and C "H15"; buoy C "H15" being located on the east side of an area set aside in subsection (5) of this section prohibiting the use of patent tongs in James River; thence following in a southwest direction along the area described in subsection (5) of this section to Cooper's Creek, located on the south side of James River in Isle of Wight County. In addition to this described area, the use of patent tongs shall be prohibited in Batten Bay and its tributaries, Chuckatuck Creek and its tributaries, and Nansemond River and its tributaries;

(4) In the Mobjack Bay and its tributaries above a line beginning at a point of land on the south side of the mouth of Brown's Bay, Gloucester County; thence in a northeasterly direction across Mobjack Bay to a point of land on the northwest side of the mouth of Pepper Creek in Mathews County. This area, as described, is to include all of Mobjack Bay and its tributaries from Brown's Bay to Pepper Creek;

(5) In the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of James River to a line in a northeasterly direction across James River to the Newport News municipal water tank located on Warwick Boulevard between 59th Street and 60th Street in the city of Newport News;

(6) In the Corrotoman River above a line beginning at point on Corrotoman Point, which line begins at latitude 37° 39′ 56″ north, longitude 76° 28′ 21″ west; thence north 70° 02′ 46.79″; thence west 4,338.37 feet to a point on Millenbeck Point which is located at latitude 37° 40′ 10″ north and longitude 76° 29′ 12″ west. This line, as described, is to include all of Corrotoman River and its tributaries from Corrotoman Point to Millenbeck Point, provided that in the area of the Corrotoman River where the use of patent tonging is permitted, the Commission shall have the authority to close or open such area, or any part, for patent tonging, and restrict or limit the manner, method, and amount of harvest in such area.

In the exercise of its authority granted pursuant to this paragraph, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority. (Code 1950, §§ 28-93, 28-93.1, 28-93.2; 1954, c. 38; 1958, cc. 182, 476; 1960, c. 517; 1962, c. 406; 1968, c. 747; 1978, c. 208; 1980, c. 325; 1981, c. 52.)

§ 28.1-84. **Maximum weight for patent tongs.** — It shall be unlawful for any person to use patent tongs exceeding 100 pounds in gross weight including any attachments thereto or thereon, excluding rope for the taking or catching of oysters. The teeth of said patent tongs shall not exceed four inches in length. The having of a pair of patent tongs exceeding this weight and oysters in a boat at the same time, shall constitute prima facie evidence of a violation of this section. (1962, c. 406.)

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

B. In the exercise of its authority granted pursuant to this section, the Commission or the Commissioner shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority. (Code 1950, § 28-98.1; 1956, c. 313; 1962, c. 406; 1981, c. 52.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-85.1: Repealed by Acts 1985, c. 125.

§ 28.1-86: Repealed by Acts 1966, c. 684.

§ 28.1-87. Record of oysters handled; tax. — All purchasers, planters, packers, importers of shucking stock or shippers shall keep accurate and itemized records, in a manner and form approved by the Commission, which shall contain (i) the number of bushels of oysters, before shucking, that come from public grounds, private grounds, or are imported; (ii) from whom purchased or obtained; (iii) the number of bushels and price paid per bushel for each seller; and (iv) if from public grounds, from what general area thereof. Any seller accepting cash in payment for his oysters shall be required to sign an acknowledgment of the transaction and shall receive a copy of such acknowledgment from the buyer. Such records shall be open for inspection by the Commissioner and a copy available to him or any employee designated by him to inspect or receive the same; and a failure to keep such a record shall be unlawful and shall be punishable as hereinafter provided.

The purchasers, planters, packers, importers of shucking stock or shippers shall pay a tax, to be known as inspection tax, to the Commonwealth of Virginia, or to the person authorized to receive the same, of three cents for each bushel of oysters taken, caught, imported, or purchased, it being the intent and purpose of this section to impose a tax upon all oysters taken, caught, imported or purchased, except those which are to be replanted in the waters of the Commonwealth. The proceeds from this tax shall be paid into the general fund of the state treasury.

The tax shall be collected by the Commissioner or any employee designated by him to collect such tax from the owner, master or operator of any boat or vessel, motor vehicle, or the purchaser, importer or shipper, regardless of whether he is a packer, planter or an individual working on public grounds, immediately when each boat, vessel or motor vehicle is loaded or arrives in the State when the oysters do not go to a shucking or packinghouse. If the oysters are going to a shucking or packinghouse located in the Commonwealth of Virginia, then the tax shall be collected from the shucking house or packer. If the tax has not previously been paid, the tax shall be paid by such purchaser, packer, importer or shipper within the first fifteen days of each month immediately following the month in which such oysters are shucked, packed, shipped or marketed. (Code 1950, § 28-100; 1960, c. 517; 1962, c. 406; 1966, c. 684; 1975, c. 199; 1976, c. 255.)

Editor's note.—This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-88. Right to inspection of oysters when loaded on conveyance. — The Commissioner or any inspector, deputy, or captain of any oyster police boat of this State shall have the right at all times to inspect any of the oysters taken or purchased as aforesaid, loaded on any boat, or vessel, motor vehicle or other conveyance or sold to any person, firm, or corporation wherever they may be, as to the quality or measurements. (Code 1950, § 28-101; 1962, c. 406.)

§ 28.1-89. Export tax; disposition of funds; permit to carry, etc., oysters out of State. — In addition to all other taxes imposed by law, there shall be an export, or out-of-state tax of twenty cents per bushel imposed on all oysters, including seed oysters, taken from any of the public oyster grounds of this State and shipped unshucked from this State. A record shall be kept on all out-of-state shipments. The provisions of this section shall not be applicable to the sale of seed oysters to the Potomac River Fisheries Commission.

All funds received or collected pursuant to this section shall be paid into the state treasury to the credit of the Public Oyster Replenishment Fund for the purpose of such fund.

It shall be unlawful for any person, firm or corporation to carry, or attempt to carry, or to buy for the purpose of carrying out of this State any size or kind of oysters taken from the natural rocks, beds or shoals in the waters of this Commonwealth until he has first obtained for each cargo a permit to do so from an inspector and has paid to the inspector the required export, inspection and replenishment taxes with buyer's report. In place of a cargo permit, the Commissioner may grant a monthly permit at the beginning of each calendar month to a packing or shucking house located in the Commonwealth of Virginia, provided that the packing or shucking house is in compliance with the provisions of this section.

The permit shall state the name of the boat or license number of the motor vehicle; the name and address of the owner and/or master of the boat or owner and/or operator of the motor vehicle. The permit shall state the name and address of the person, firm or corporation to whom the cargo of oysters are to be delivered. The permit shall specify the number of bushels and whether they are seed or shucking stock.

Before such permit shall be granted, the applicant shall certify, before an inspector, that the cargo will not be delivered or discharged to any other person, firm or corporation. (1962, c. 406; 1964, c. 393; 1966, c. 684; 1968, c. 747; 1976, c. 255.)

As to former tax on seed oysters carried out of State, imposed by repealed § 28-110, see Haughton v. Lankford, 189 Va. 183, 52 S.E.2d 111 (1949).

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

On or before the fifth day of each month the inspector or police boat captain shall render a statement to the Commissioner, on blanks furnished by the Commissioner, showing the amounts collected, and from whom collected. (Code 1950, §§ 28-103, 28-105; 1954, c. 367; 1960, c. 517; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-91: Repealed by Acts 1970, c. 726.

§ 28.1-92. Records of oysters taken from public rocks and reports to be made. — The Commission shall issue to licensed oyster buyers in this State forms that shall be used in reporting to the Commission. Except as provided in § 28.1-93, on or before the fifteenth day of each month the oyster buyer shall send to the Commission a complete report of all oysters purchased the preceding month on the form above described setting forth the total number of bushels of oysters taken from the public grounds, the general area from which taken, and the price paid together with all taxes collected by them as required by § 28.1-93; provided, however, the information provided herein shall be used only for the collection of taxes mentioned in this section and for information to the Virginia Institute of Marine Science. (1962, c. 406; 1964, c. 393; 1970, c. 726; 1976, c. 255.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-93. Tax on oysters taken from public rocks; reports of oysters taken from seed area of James River. — A. There is imposed upon all oysters taken from the public rocks, beds or shoals the following replenishment tax: on all oysters taken from the seed area of the James River, or from any other area designated as a seed area by the Commission, selling for $1.50 or less per bushel, 5 cents per bushel, selling for $1.51 through $2.50 per bushel, 10 cents per bushel, selling for $2.51 through $3.50 per bushel, 15 cents per bushel, selling for $3.51 through $4.50 per bushel, 20 cents per bushel, selling for $4.51 through $5.50 per bushel, 25 cents per bushel, selling for $5.51 through $6.50 per bushel, 30 cents per bushel, selling for $6.51 or above per bushel, 50 cents per bushel; on all oysters taken from any public rocks, beds or shoals other than the James River seed area or any other area designated as a seed area by the Commission, 50 cents per bushel.

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

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

D. The permit or license of any person purchasing, buying or selling oysters taken or caught from public rocks, beds or grounds who fails to comply with the requirements of this section shall be subject to revocation by the Commission. (Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406; 1964, c. 393; 1966, c. 173; 1978, c. 583; 1983, c. 18.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-94. Public Oyster Rocks Replenishment Fund. — All oyster replenishment taxes collected by the Marine Resources Commission shall be credited and deposited to a special Public Oyster Rocks Replenishment Fund, to be used only for administration of the program, and for replenishment, planting, and replanting the public oyster rocks, beds, and shoals of this State with seed oysters, oyster shells, or other material which will catch, support and grow oysters. These funds shall be withdrawn and expended for such purpose on the order of the Marine Resources Commission. (1962, c. 406.)

Cross references. — For certain royalties and fees which are credited to the fund, see §§ 62.1-3, 62.1-4.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

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

All funds received or collected under this section shall be paid into the state treasury to the credit of a fund to be known as the Special Public Oyster Rock Replenishment Fund for the purposes of such fund. Expenditures and disbursements from such fund shall be made by the State Treasurer on warrants of the Comptroller issued on vouchers signed by such person or persons as shall be so authorized and designated by the Marine Resources Commission. (1962, c. 636.)

The number of this section was assigned by the Virginia Code Commission, the number in the 1962 act having been 28-21.1.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-95. Violations; recovery of taxes. — Any person who violates any provision of this article shall be guilty of a misdemeanor. Any person collecting taxes under this article and willfully failing to pay such taxes collected to the Commission when and as required by law shall be guilty of larceny of said tax money collected and punished as provided by law for the crime of larceny. The Commission may maintain an action at law against any person required to collect or collecting taxes and failing to pay them to the Commission for the sum so collected, or which should have been collected, plus interest, and a penalty of fifteen percent. (Code 1950, § 28-109; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

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

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

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

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

§ 28.1-100. Baylor survey; surveying and resurveying planting grounds and marking lines. — (1) *Surveys and reports as conclusive evidence.* — The survey or surveys of the natural oyster beds, rocks and shoals of the Commonwealth, made in pursuance of an act of the General Assembly of Virginia, entitled an act to protect the oyster industry of the Commonwealth, approved on February 29, 1892, and acts amendatory thereof, or supplemental thereto, shall until otherwise provided by law continue to be held in all respects to be the survey or surveys defining and determining the natural oyster beds, rocks and shoals of the Commonwealth; the surveys and reports filed in accordance with the acts aforesaid shall be construed in all the courts of the Commonwealth to be conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks and shoals lying within the waters of the counties wherein such reports and surveys are so filed, and further, that there are no natural oyster beds, rocks or shoals lying within the waters of the counties wherein such reports and surveys are filed other than those embraced in the surveys authorized by the acts aforesaid. The surveys of the natural oyster beds, rocks or shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low-water mark of said body of water, any surveys, plats, markers, or lines to the contrary notwithstanding.

(2) *Resurvey on motion of Commission or on application of citizens.* — The Marine Resources Commission may select and appoint, on such terms as may be agreed upon, any surveyor to survey or resurvey any oyster-planting grounds either in his own or any other county, and to reestablish and permanently mark any line or lines of the Baylor survey of natural oyster rocks, which, in the judgment of the Commission, it may be necessary to define. (Code 1950, § 28-117; 1962, c. 406; 1964, c. 624.)

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

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

The Commissioner of Marine Resources shall have available at all times copies of the Baylor survey charts and plats, to be offered for sale to the public in such manner as the Commissioner may determine and a fee of three dollars per copy shall be charged therefor. (Code 1950, § 28-118; 1962, c. 406; 1964, c. 393.)

§ 28.1-101.2. Crossings of Baylor survey. — The State Highway and Transportation Board, in the performance of its duties, is hereby authorized to maintain, repair, reconstruct or replace any existing crossings of the Baylor survey; provided further, that authorization is hereby granted for any Baylor survey crossing determined by the Board to be necessary across the Hampton Roads from Newport News to Portsmouth, across the Elizabeth River at Norfolk, and construction parallel to an existing crossing of the James River from Newport News to Isle of Wight County. (1974, c. 93.)

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

(1) For each person taking or catching crabs by dip nets, net, ordinary trotline, hand rake, or with any device not otherwise licensed by this section other than a hand line, eight dollars. No boat shall be used to pull or push any rake.

(2) For each person taking or catching crabs with patent trotlines, thirty-one dollars.

(3) For each boat operator catching blue crabs by means of a device made of wire or thread net and commonly known as a crab pot, twenty-nine dollars; or if catching crabs with one or more assistants, forty-eight dollars. No such pot or device shall be used which has a mesh less than 1½". A holder of a crab pot license may use peeler pots, exempt from mesh size limitations, without securing an additional license. A peeler pot is defined as a wire mesh pot baited with only live adult male (jimmy) blue crabs and food for these crabs. During the months of June, July and August, however, any person fifteen years of age or under may be an assistant to a boat operator catching blue crabs by means of a device made of wire or thread net without obtaining a license.

(4) For each boat used for the purpose of taking or catching hard crabs with dredges, fifty-eight dollars; but such boat shall not be used as a boat for buying crabs, when the Commission limits the taking of crabs under § 28.1-168.

(5) [Repealed.]

(6) (a), (b) [Repealed.]

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

§ 28.1-165.1. Use limits of scrape and dredge; "crab dredge" defined. — For the purposes of this chapter a crab scrape shall have a mouth no larger than four feet overall and the bar shall have no teeth. A crab scrape may be hauled only by hand, and no boat shall have more than two such scrapes overboard at any time. Any person having a scrape on board shall have no more than one bushel of hard crabs in possession. For purposes of this chapter a "crab dredge" shall be a device designed and used to dig into the bottom for the purpose of catching buried crabs, shall have a mouth no larger than twelve feet overall, may have teeth on the bar, and may be hauled in any manner. When two or more dredges are fixed together, their total width shall not exceed fourteen feet. No crab dredge shall use hydraulic methods to dislodge the crabs from the bottom. (1983, c. 603.)

Cross reference. — For additional limits on use of dredges, see § 28.1-166.

§ 28.1-166. Use of dredges. — No dredges shall be used for catching crabs between April 1 and December 1 of any year; however, the Marine Resources Commission, when in its judgment it is deemed advisable on account of weather conditions and not contrary to the public interest to do so, may open any season as early as November 16 and it may likewise extend any season as

late as April 16; nor shall dredges be used at any time of the year in any of the rivers, or their estuaries, inlets, or creeks for the purpose of taking crabs except on the ocean side of Accomack and Northampton Counties. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority. (Code 1950, § 28-171; 1960, c. 517; 1962, c. 406; 1981, c. 52; 1983, c. 603.)

Cross reference. — For definition of "crab dredge" and additional limits on use of dredges, see § 28.1-165.1.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-167. Limitations on sizes of crabs to be taken. — It shall be unlawful for any person to catch, take or have in possession at any time more than ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel, which measure less than five inches across the shell from tip to tip of the longest spikes, or to destroy them in any manner, but shall immediately return the same to the water alive. Adult female crabs, peeler crabs and soft crabs are exempt from these limitations except that the Commission may change such size restriction for a period not to exceed sixty days to respond to significant ecological changes.

In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

The inspector shall have the authority to grade or cull any number of barrels, baskets or containers of crabs in any person's possession which he may deem necessary.

If the inspector finds in excess of ten undersize hard crabs per United States standard bushel or thirty-five hard crabs per barrel, the entire quantity of crabs in or from each barrel, basket or container, which was inspected, and found to contain in excess of ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel, shall be seized by the inspector and all such crabs shall be immediately returned to the water by the person who possessed such crabs. The refusal to return the crabs to the water shall constitute a distinct and separate offense from any other violation.

The aforesaid requirement to return the crabs to the waters shall apply to crabs taken and in possession of a crabber or catcher and shall not apply to crabs which have been purchased by a buyer and in the buyer's possession, nor shall it apply to crabs which have been transported a distance of five miles from the nearest salt water. (Code 1950, § 28-172; 1960, c. 517; 1962, c. 406; 1966, c. 684; 1970, cc. 610, 726; 1977, c. 35; 1978, c. 369; 1981, c. 52; 1985, c. 166.)

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

Possession of crabs in excess of the amount provided by such regulation shall be prima facie evidence of violation, provided, however, that the provisions of this section shall not apply to crab buy boats. (Code 1950, § 28-172.1; 1956, c. 357; 1958, c. 449; 1962, c. 406.)

§ 28.1-169. Peeler crab defined. — A peeler crab for the purposes of this article is a crab that has a soft shell fully developed under the hard shell, or a crab on which there is a pink or white line or rim on the edge of that part of the "back fin" next to the outer section of this fin. (Code 1950, § 28-173; 1962, c. 406.)

§ 28.1-170. Closed season for taking crabs in certain area. — It shall be unlawful for any person to take or catch for resale crabs from the following area from the first day of June to the fifteenth day of September, both inclusive, of every year. Ownership of a current license to take or catch crabs shall be prima facie evidence that such taking and catching of crabs was for resale purposes. The limits of the area are defined as follows:

Beginning at the point of origin of the center line of the Hampton Roads Bridge Tunnel facility where such facility commences in the City of Norfolk, Virginia, and following the shoreline in a general easterly direction, and also extending 200' out from the mean low-water mark of such shoreline into the Chesapeake Bay, to the Nansemond Hotel, Ocean View, and thence in a general northerly direction to Thimble Shoal Lighthouse; thence running in approximately a northeasterly direction to Cape Charles Lighthouse, located on Smiths Island; and thence in approximately a southwestern direction to Cape Henry Lighthouse, and bounded by the shoreline; and thence following the shoreline in a general westerly direction back to the point of beginning. (Code 1950, § 28-174; 1962, c. 406; 1977, c. 262; 1978, cc. 107, 278; 1979, c. 128.)

§ 28.1-171. License number to be displayed on boat. — In licensing a person for taking crabs with boat the inspector shall cause to be placed at the conspicuous point on the starboard side of such boat, or on the mast thereof, a number, and the number or numbers shall be kept displayed during the crabbing season by the master of the boat. (Code 1950, § 28-175; 1962, c. 406.)

§ 28.1-172. Taking crabs on Sunday. — It shall be unlawful to take from the waters of the Commonwealth crabs for commercial purposes on Sunday or between sunset and three hours before sunrise. Except as otherwise provided, this section shall not apply to peeler pounds or floats.

Any person licensed to take or catch crabs may take only peeler crabs from crab pots on Sunday. In taking peeler crabs from crab pots on Sunday, it shall be unlawful for any person to have in his possession more than five percent by count of hard-shelled crabs. Any violation of this section shall be a Class 3 misdemeanor. (Code 1950, § 28-195; 1958, c. 471; 1960, c. 517; 1962, c. 406; 1975, c. 12; 1976, c. 34; 1983, c. 78; 1985, c. 181.)

§ 28.1-172.1. Sale of licenses for crabbing. — In order to appraise the anticipated level of harvesting for the purpose of taking seasonal conservation measures, the Commission may require the purchase of licenses before each crab season begins. It may set time periods for the sale of licenses to crab and may grant extensions to individual applicants when it finds exceptional circumstances exist. (1985, c. 165.)

§ 28.1-173. Use of crab traps and crab pounds to take crabs. — It shall be unlawful to place, set or use crab traps or crab pounds within 100 yards of any other crab trap or crab pound without respect to whether or not the other crab trap or crab pound is owned by the same or some other person, firm, corporation or association. Any person, corporation or association violating any of the provisions of this chapter shall be guilty of a misdemeanor and punished as provided by law.

Every owner or user of a crab trap or crab pound shall completely remove such traps, leads, poles and gear from their locations not later than December 1 of each year. No licenses for crab traps or crab pounds for a subsequent year shall be issued to any person, corporation or association failing to accomplish such removal until the same has been accomplished. (Code 1950, § 28-198.1; 1950, p. 229; 1962, c. 406; 1968, c. 785; 1984, c. 99.)

§ 28.1-173.1. **Unlawful to place crab, eel, or fish pots in certain channels.** — It shall be unlawful to place or maintain any crab, eel, or fish pot in a navigable channel which has navigation aids installed or approved by any agency of the United States government. The owner or user of any crab, eel, or fish pot who has located such crab, eel, or fish pot in accordance with the provisions of this section shall be relieved of civil liability for any damages resulting from the location of such crab, eel, or fish pot. (1968, c. 785; 1981, c. 23.)

§ 28.1-173.2. **Identification of crab pots.** — Any person, corporation or association owning or using a crab pot or pots, for whom a license is prescribed in this title, shall display and maintain his or its current license number, issued by the Marine Resources Commission, on the float or stake attached to each such crab pot, in a legible and visible manner and in figures of not less than one inch in height. The identification of the owner of such crab pot by virtue of the license number above described shall not give rise to any liability on its owner for its location so long as the crab pot is placed in the waters of this State in compliance with the laws thereof. (1968, c. 750.)

§ 28.1-174. **Crabs for household use.** — Anyone may take or catch by dip net or by one single crab pot, not exceeding one bushel of crabs per day for household use only, without obtaining a license.

If crabs are taken or caught in any other manner, for any purpose, all provisions of this chapter relating to crabs shall apply thereto. (Code 1950, § 28-177; 1962, c. 406; 1964, c. 393.)

Duties of Virginia Institute of Marine Sciences

§ 28.1-195. Virginia Institute of Marine Science continued; duties. — The Virginia Institute of Marine Science, hereafter referred to as Institute, is continued within the College of William and Mary as provided in chapter 5 (§ 23-39 et seq.) of Title 23 of this Code. All references in this Code to the Virginia Institute of Marine Science hereafter shall be deemed references to the Virginia Institute of Marine Science within the College of William and Mary.

It shall be the duty of the Institute:

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

(b) To consider means by which fisheries resources may be conserved, developed and replenished and to advise the Marine Resources Commission and other agencies and private groups on these matters;

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

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

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

(f) To engage in research in the marine sciences;

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

(h) To engage in research and provide training, technical assistance and advice to the Commission on Conservation and Development of Public Beaches on erosion along tidal shorelines, the Soil and Water Conservation Commission on matters relating to tidal shoreline erosion and to other agencies upon request.

The above studies shall include consideration of the seafood and other marine resources including the waters, bottoms, shore lines, tidal wetlands, beaches and all phenomena and problems related to marine waters and the means by which these marine resources might be conserved, developed and replenished. (Code 1950, §§ 28-248, 28-250, 28-250.1; 1962, c. 406; 1979, c. 294; 1980, c. 369.)

Powers of the Commission of Game and Inland Fisheries

§ 29-11. General powers of the Commission. — In addition to the specific authority elsewhere herein conferred, the Commission shall have general power and authority to acquire by purchase, lease, exchange, gift or otherwise, such lands and waters anywhere in this State as it may deem expedient and proper; to establish and erect thereon and therein such buildings, structures, dams, lakes and ponds as it may deem necessary and proper, and to conduct and carry on such operations for the preservation and propagation of game birds, game animals, fish and other wildlife as it may deem proper to increase, replenish and restock the lands and inland waters of the State; to purchase, lease or otherwise acquire lands and waters for game and fish refuges, preserves or public shooting and fishing, and to establish such lands and waters under appropriate regulations; to acquire by purchase, lease, or otherwise lands and structures for use as public landings, wharves, or docks; to establish and erect thereon such structures or other improvements as it deems necessary; and to control the use of all such public landings, wharves or docks by appropriate regulation; to acquire and introduce any new species of game birds, game animals or fish on the lands and within the waters in the State; to adopt such other means as it may deem necessary to restock, replenish and increase any depleted native species of game birds, game animals, or fish; to have educational matter pertaining to wildlife published and distributed; to hold exhibits throughout the State for the purpose of interesting school children, agriculturists and other persons in the preservation and propagation of the wildlife of this State; and to employ speakers and lecturers to disseminate information concerning the wildlife of the State and the protection, replenishment and propagation thereof; and to have and to exercise such other powers and to do such other things as it may deem advisable for the conservation, protection, replenishment, propagation of and increasing the supply of game birds, game animals and fish and other wildlife of the State. In addition to those powers already enumerated, the Commission may permit the educational television entities in Virginia to use land under the jurisdiction of the Commission for the site location of towers and other transmission equipment as required for the most efficient operation of their facilities. (1930, p. 635; Michie Code 1942, § 3305(4); 1944, p. 517; Michie Suppl. 1946, § 585(84); 1970, c. 254; 1979, c. 264; 1980, c. 301.)

§ 29-13. Enforcement of laws. — The Commission is vested with jurisdiction, power and authority to enforce or cause to be enforced all laws for the protection, propagation and preservation of game birds and game animals of this State and all fish in the inland waters thereof, which waters shall be construed to mean and to include all waters above tidewater and the brackish and freshwater streams, creeks, bays, including Back Bay, inlets, and ponds in the tidewater counties.

§ 29-14. Prosecutions. — The Commission shall prosecute all persons who violate such laws and shall seize and confiscate any and all wild birds, wild animals and fish that have been illegally killed, caught, transported or shipped.

§ 29-20. Game protection fund. — The amount received by the State Treasurer from the sale of hunting, trapping and fishing licenses and such other items as may accrue to the Commission shall be set aside by him and shall constitute the game protection fund. This fund, including any unexpended balance on hand at any time, shall be a separate fund in the State treasury and shall be used for the payment of the salaries, allowances, wages, and expenses incident to carrying out the provisions of the hunting, trapping and inland fish laws and for no other purpose, except as provided in §§ 58-151.072:1 and 62.1-168.

§ 29-125. **Power of the Commission.** — Having a due regard for the distribution, abundance, economic value and breeding habits of wild birds, wild animals, and fish in inland waters, the Commission is hereby vested with the necessary power to determine when, to what extent, if at all, and by what means it is desirable to restrict, extend or prohibit in any degree the provisions of law obtaining in this State or any part thereof for the hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage or export of any wild bird, wild animal, or fish from inland waters and may upon its own motion or upon written petition of one hundred licensed resident landowners of any county propose regulations for such purpose.

INLAND WATERS - LAWS PERTAINING TO FISH

§ 29-148. **Unlawful to take or attempt to take, possess, sell or transport fish except as permitted.** — Unless and until otherwise provided by a regulation of the Commission, after a public hearing, in accordance with the provisions of this title, it shall be unlawful for any person to take or attempt to take any fish in inland waters other than shad, herring or mullet, except by fishing with a hook and line or rod and reel, held in the hand, or to catch, trap, take, capture, kill, or attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried, by any means whatever, receive for shipment, transport or carriage, or export, or import at any time or in any manner any species of bass or trout, or the carcass or any part thereof, except as specifically permitted by this article and only by the manner or means and within the numbers stated; except that in the Counties of Mecklenburg, Pittsylvania, Prince Edward, City of Danville, Charlotte, Campbell, Halifax, Amelia (except between Vaughn's Pond and Meadsville Dam), Caroline and King George and in the Meherrin River in Lunenburg County it shall be lawful to fish with "fish traps" or "fish pots" and haul seines in any and all streams and waters, provided that no person shall catch fish with "fish traps" or "fish pots" and haul seines to be sold; and provided further that it shall be unlawful in any and all of such counties to remove from the waters thereof any bass, perch and trout caught with fish pots or fish traps or haul seines, and any person so catching bass, perch and trout shall immediately return the same to the waters. The Commission shall have the authority to close any streams or rivers or parts of streams or rivers in such counties when same shall be stocked with fish by the Commission. Any provisions of this title to the contrary notwithstanding, it shall be lawful to sell or offer to sell for human consumption trout which have been lawfully acquired provided such trout have been propagated and raised in a hatchery or by other artificial means.

The Commission of Game and Inland Fisheries shall by appropriate regulation establish a practical system of identification of trout so offered for sale for table use.

A violation of the provisions of this section or regulations based thereunder shall be declared a misdemeanor punishable by a penalty as provided by law. (1930, p. 650; 1932, p. 763; 1934, p. 75; Michie Code 1942, § 3305(40); 1948, p. 427; 1956, c. 490; 1958, c. 514; 1960, c. 126; 1962, c. 469; 1966, c. 413.)

§ 29-148.1. Permits for competitive striped bass fishing for prizes. — The Commission may by regulation require that permits be obtained from the Commission to organize, conduct, supervise or solicit entries for striped bass fishing tournaments, rodeos or other competitive striped bass fishing events for which prizes are offered, awarded, or accepted, either in money or other valuable considerations. Each such tournament shall be conducted in accordance with any special rules which the Commission may prescribe for that specific event provided such rules are issued in writing and made a part of the permit issued, and such special rules for each specific fishing event may be promulgated by the Commission without regard to the provisions of §§ 29-125 through 29-128.1 of this Code. Special rules for any such competitive fishing events may include, but need not be limited to, restrictions on fishing methods, baits, lures and other tackle, times when competitive fishing under the permit is authorized, and records and reports to be submitted to the Commission by the permittee. It shall be the duty of each permittee to inform all participants in a competitive striped bass fishing event of applicable special rules imposed by the Commission, and no entrant in any such event shall fish in violation of such special rules. The issuance of permits required by Commission regulation for competitive striped bass sport fishing shall be discretionary with the Commission, and may be denied in any case in which the Commission deems such denial to be necessary to protect the striped bass fishery resource in any public water. (1979, c. 48.)

§ 29-149. Failure to return game fish. — Any person violating the provisions of § 29-148 by not returning bass, perch and trout to the waters from which caught, shall be fined not less than $10 nor more than $100 for each offense. (1932, p. 764; 1934, p. 75; Michie Code 1942, § 3305(40); 1948, p. 428; 1962, c. 469.)

§ 29-150 Open season; method of taking bass and trout. — The open season during which it shall be lawful to take any species of bass and trout from the inland waters of this State, but only by angling with hook and line, attached to a rod or pole, either with or without a reel, and with or without the aid of a hand landing net, including the first and last days thereof, shall be as promulgated by Commission regulations.

Bass, including rock bass and redeye.

Trout, any species. — The owner, or lessee, of any private pond stocked by himself, or by the Commission not less than three years prior thereto, may capture any fish therefrom for his own use at any time; provided that nothing in this section shall affect the operation of any local acts heretofore or hereafter enacted. (1930, p. 650; Michie Code 1942, § 3305(41); 1944, p. 515; 1946, p. 129; 1948, p. 561; 1960, c. 590.)

Editor's note. — The wording of this section is exactly as it appears in c. 590 of the 1960 Acts.

This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 29-150.1: Repealed by Acts 1977, c. 377.

§ 29-151. Dams and fish ladders; inspection of. — Any dam or other thing in a watercourse, which obstructs navigation or the passage of fish, shall be deemed a nuisance, unless it be to work a mill, manufactory or other machine or engine useful to the public, and is allowed by law or order of court. Any person owning or having control of any dam or other obstruction in any

of the streams of this State above tidewater which may interfere with the free passage of fish, shall provide every such dam or other obstruction with a suitable fish ladder, so that fish may have free passage up and down the streams during the months of March, April, May and June of each year, and maintain and keep the same in good repair, and restore it in case of destruction; provided, however, that this section shall not apply to the Meherrin River within the Counties of Brunswick and Greensville, nor to the Meherrin River within or between the Counties of Lunenburg and Mecklenburg, nor to the Nottoway River between the Counties of Lunenburg and Nottoway, nor to Abram's Creek in Shawnee district, Frederick County, nor to the James River between the Counties of Bedford and Amherst, nor any streams within the Counties of Augusta, Lunenburg, Mecklenburg, Louisa, Buckingham, Halifax, Montgomery, Pulaski, Franklin, Russell, Tazewell, Giles, Bland, Craig, Wythe, Carroll and Grayson, nor to that part of any stream that forms a part of the boundary of Halifax and Franklin Counties; provided, however, that no fish ladders shall be required on dams twenty feet or more in height or on such dams as the Commission may deem it unnecessary on which to have ladders. Any person failing to comply with this provision shall be fined one dollar for each day's failure; and the circuit court of the county or the corporation court of the city in which the dam is situated, after reasonable notice, by rule or otherwise, to the parties or party interested and upon satisfactory proof of the failure, shall cause the fishway to be constructed, or put in good repair as the case may be, at the expense of the owner of the dam or other obstruction. It shall be the duty of the game warden to make a personal inspection of dams and rivers in his respective county or city in the months of April and October of each year and report to the circuit court of the county or the corporation court of the city any violation of this section. (1930, p. 651; Michie Code 1942, § 3305(42); 1950, p. 891; 1958, c. 607.)

§ 29-152. Fish wheels for restocking. — Notwithstanding any provision of existing law or any rule or regulation adopted in pursuance thereof to the contrary, fish wheels may be maintained and operated in any of the ponds in this State for a period of two years, provided no such fish wheel shall be maintained or operated except for the sole purpose of restocking such ponds. Any violation of the provisions of this section shall be deemed a misdemeanor. (1936, p. 56; Michie Code 1942, § 3305(42a).)

§ 29-153. Prohibition against use of substances injurious to fish. — It shall be unlawful to use fish berries, lime, giant powder, dynamite, or any other substance for the destruction of fish, or knowingly cast any noxious substance or matter into any watercourse of this State by which fish therein or fish spawn may be destroyed, or to place or to allow to pass into the watercourses of the State any sawdust, ashes, lime, gas, tar, or refuse of gas works, injurious to fish; provided, however, that Giles, Bland and Franklin Counties are exempt from the prohibition of permitting sawdust to be put in their watercourses when a sawmill is run in connection with a grain mill, and permanently located in a stream of water used as power toward the operation of the mill, and provided, further, that the sawdust pollution from such operation is not sufficient to destroy fish or fish spawn, and provided, however, in the waters of Piney River and its tributaries in the Counties of Amherst and Nelson, it shall not be unlawful to run sawdust in those portions of the stream not inhabited by trout. Any person violating any of the provisions of this section shall, on conviction thereof, be fined for each offense not less than $25 nor more than $250, and be imprisoned in jail until the fine is paid, but not exceeding 30 days, except that any person convicted of destroying fish by means of dynamite or other explosives shall be punished by a fine of not less than $200 nor more than $500, or, in the discretion of the court or jury, by confinement in jail not to exceed 90 days, or by both such fine and imprisonment.

The owner or lessee of any property on which fish are destroyed by means of dynamite or other explosives shall be entitled to recover liquidated damages in the amount of $100 from any person convicted of destroying fish by such means. (1930, p. 651; 1942, p. 719; Michie Code 1942, § 3305(43); 1956, c. 709; 1962, c. 469.)

Powers and Duties of the Board of Health

§ 32.1-164. Powers and duties of Board; regulations. — A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment and disposal of sewage, all sewerage systems and treatment works as they affect the public health and welfare. The regulation of sewage, as it may affect the public health, shall be primarily the responsibility of the Board and, in cases to which the provisions of chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia are applicable, the joint responsibility of the Board and the State Water Control Board in accordance with such chapter.

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to chapter 3.1 of Title 62.1 of the Code of Virginia.

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

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works.

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

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

(a) Public and private wells supplying water for human consumption

(b) Lakes and other impounded waters

(c) Streams and rivers

(d) Shellfish waters

(e) Groundwaters

(f) Areas and places of human habitation

(g) Property lines.

6. Standards as to the adequacy of an approved water supply and the siting of wells prior to the issuance of a septic tank permit, provided that no permit shall be required for the installation of private wells.

7. Standards governing the transportation of sewage.

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

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

§ 32.1-165. (Effective January 31, 1985) Prior approval required before issuance of building permit. — No county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of said permit has been approved by the Review Board.

§ 33.1-207. Facilities for persons desiring to fish from bridges. — The State Highway and Transportation Commission may, in its discretion, upon the request in writing of any department or agency of the State, construct and maintain, on or in connection with any bridges which now constitute a part of any system of state highways, such platforms, walkways or other facilities as may be necessary or proper for the safety and convenience of persons who desire to fish therefrom, the cost thereof to be paid out of funds furnished by the department or agency making the request from its own funds or funds furnished to such department or agency by gift from private sources. The Department of Highways and Transportation shall not be held responsible for damage caused by the construction or use of such facilities. (Code 1950, § 33-123; 1970, c. 322.)

RECREATIONAL ACCESS ROAD FUND

§ 33.1-223. Fund for access roads and bikeways to public recreational areas and historical sites; construction, maintenance, etc., of such roads and bikeways. — (a) The General Assembly finds and declares that there is an increasing demand by the public for more public recreational areas throughout the Commonwealth, therefore, creating a need for more access to these areas. There are also many sites of historical significance to which access is needed.

The General Assembly hereby declares it to be in the public interest that access roads and bikeways to public recreational areas and historical sites be provided by using highway funds obtained from unclaimed refundable marine motor fuel tax collections. This section is enacted in furtherance of these purposes.

(b) Notwithstanding any other provision of law, (and in order to provide equal matching of funds hereinafter appropriated from the general fund), the State Highway and Transportation Commission shall, from funds allocated to the primary system, secondary system, or urban system of state highways, set aside the sum of $1,500,000 initially. This fund shall be expended by the Commission for the construction, reconstruction, maintenance or improvement of access roads and bikeways within counties, cities and towns. At the close of each succeeding fiscal year the Commission shall replenish this fund to the extent it deems necessary to carry out the purpose intended, provided the balance in the fund plus the replenishment does not exceed the aforesaid $1,500,000.

(c) Upon the setting aside of the funds as herein provided, the State Highway and Transportation Commissioner shall construct, reconstruct, maintain or improve access roads and bikeways to public recreational areas and historical sites upon the following conditions:

(1) When the Director of Conservation and Historic Resources has designated a public recreational area as such or an historic area as such and recommends to the State Highway and Transportation Commission that an access road or bikeway be provided or maintained to that area; and

(2) When the State Highway and Transportation Commission pursuant to the recommendation from the Director of Conservation and Historic Resources declares by resolution that the access road or bikeway be provided or maintained; and

(3) When the governing body of the county, city or town in which the access road or bikeway is to be provided or maintained passes a resolution requesting the road.

(4) When the governing body of the county, city or town in which the bikeway is to be provided or maintained adopts an ordinance pursuant to Article 8 (§ 15.1-486 et seq.), Chapter 11, Title 15.1.

No access road or bikeway shall be constructed, reconstructed, maintained or improved on privately owned property.

(d) Any access road constructed, reconstructed, maintained or improved pursuant to the provisions of this section shall become part of the primary system of state highways, the secondary system of state highways or the road system of the locality in which it is located in the manner provided by law and shall be designated as a scenic highway or byway as provided for in Article 5 (§ 33.1-62 et seq.), Chapter 1, Title 33.1, and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such systems. Any bikeway path constructed, reconstructed, maintained, or improved pursuant to the provisions of this section which is not situated within the right-of-way limits of an access road which has become, or which is to become, part of the primary system of state highways, the secondary system of state highways, or the road system of the locality, shall, upon completion, become part of and be regulated and maintained by the authority or agency maintaining the public recreational area or historical site. It shall be the responsibility of the authority, agency, or locality requesting that a bicycle path be provided to a public recreational or historical site to provide the right-of-way needed for the construction, reconstruction, maintenance, or improvement of the bicycle path, if the bikeway is to be situated outside the right-of-way limits of an access road.

The State Highway and Transportation Commission with the concurrence of the Director of Conservation and Historic Resources is hereby authorized to make regulations to carry out the provisions of this section. (Code 1950, § 33-136.3; 1966, c. 484; 1968, c. 221; 1970, c. 322; 1975, c. 362; 1982, c. 643; 1984, c. 739.)

MINERALS OTHER THAN COAL SURFACE MINING LAW

§ 45.1-180. (For effective date see note) Definitions. — The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section except where the context clearly requires a different meaning.

(a) *Mining.* — Means the breaking or disturbing of the surface soil or rock in order to facilitate or accomplish the extraction or removal of minerals; any activity constituting all or part of a process for the extraction or removal of minerals so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction. Nothing herein shall apply to mining of coal. This definition shall not include, nor shall this title, chapter, or section be construed to apply to the process of searching, prospecting, exploring or investigating for minerals by drilling.

(b) *Disturbed land.* — The areas from which overburden has been removed in any mining operation, plus the area covered by the spoil and refuse, plus any areas used in such mining operation including land used for processing, stockpiling, and settling ponds.

(c) *Overburden.* — All of the earth and other material which lie above a natural deposit of minerals, ores, rock or other solid matter and also other materials after removal from their natural deposit in the process of mining.

(d) *Spoil.* — Any overburden or other material removed from its natural state in the process of mining.

(e) *Operator.* — Any individual, corporation or corporation officer, firm, joint venture, partnership, business trust, association, or any other group or combination acting as a unit, or any legal entity which is engaged in mining.

(f) through (i) [Repealed.]

(j) *Mining operation.* — Any area included in an approved plan of operation.

(k) *Reclamation.* — The restoration or conversion of disturbed land to a stable condition which minimizes or prevents adverse disruption and the injurious effects thereof and presents an opportunity for further productive use if such use is reasonable.

(l) *Mineral.* — Ore, rock, and any other solid homogeneous crystalline chemical element or compound that results from the inorganic processes of nature other than coal.

(m) *Division.* — The Division of Mined Land Reclamation.

(n) *Refuse.* — All waste soil, rock, mineral tailings, slimes and other material directly connected with the mine, cleaning and preparation of substances mined including all waste material deposited in the permit area from other sources. (1966, c. 734; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1984, c. 590.)

For this section as in effect until the 1984 amendment by Acts 1984, c. 590 becomes effective, see the bound volume.

Effective date of 1984 amendment. — Acts 1984, c. 590, cl. 7 provides: "That this act shall become effective on January 1, 1985, or when its provisions pertaining to Virginia's permanent regulatory program under the Federal Surface Mine Act are approved by the United States Secretary of the Interior as an amendment to Virginia's program under that Act, whichever later shall occur."

The 1984 amendment deleted subdivisions (f) and (g), defining "Director" and "Department." For effective date of this amendment, see the note above.

§ 45.1-180.2. (For effective date see note) Legislative findings; declaration of policy. — A. The General Assembly finds that the mining of minerals within the Commonwealth is an activity that makes a contribution to the standard of living of the citizens of the Commonwealth; and that it is in the public interest to insure the availability and orderly development of mineral resources now and in the future. Uncontrolled mining of such minerals and unreclaimed land can adversely affect the environment through the destruction of vegetative cover, the disruption of drainage patterns, the increased siltation and sedimentation of streams as well as other forms of pollution, and the temporary and, in some circumstances, permanent destruction of scenic beauty and wildlife habitats. The General Assembly further finds that it is often not practicable to extract minerals without disturbing the surface of the earth and producing waste materials, and that the very character of certain surface mining operations precludes complete restoration of the land to its original contour; but that it is essential to conduct mining in such a way as to minimize its effects on the environment.

B. The General Assembly recognizes that there are wide variations in the circumstances and conditions surrounding and arising out of the mining of minerals and that rehabilitation and conservation of land affected by mining of minerals will be assured only through proper planning, proper use of appropriate methods of mining, consideration of the impact of mining upon the environment as well as the land use of surrounding areas, and through the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of the mining of minerals.

C. The General Assembly declares that it is in the public interest and shall be the policy of the Commonwealth to require and encourage the proper control of mining of minerals so as to protect the public health, safety and welfare consistent with the protection of physical property and with maximum employment and the economic well-being of the Commonwealth through good industry and sound conservation practices, and to require and encourage thorough operations and reclamation planning, consideration of the surrounding environment, and incorporation of control techniques and reclamation actions in mining operations insofar as economically and physically practicable to assure such proper control of mining. To these ends, the Director is mandated to enforce this chapter and to adopt whatever regulations are found necessary to accomplish the provisions of this chapter.

D. The General Assembly by this chapter intends to exercise the police power of this Commonwealth in a coordinated statewide program to aid in the protection of wildlife, in restoring these lands to productive purposes and to control present and future problems associated with mining resources and the reclamation of disturbed lands to the end that mining activities shall be regulated in a manner that will effectuate the purpose of this chapter.

E. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right or rights of any person who is a party to any dispute involving property rights, or the right of any person to damages or other relief on account of injury to persons or property due to mining activities regulated by this chapter and to maintain any action or other appropriate procedure therefor; nor to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

§ 45.1-180.3. (For effective date see note) Authority of Director; enforcement of chapter by injunction. — A. The authority to promulgate rules and regulations to effectuate the provisions and the policy of this chapter and the authority to adopt definitions for use in interpreting this chapter are hereby vested in the Director.

B. The authority to administer and enforce the provisions of this chapter is hereby vested in the Director. In administering and enforcing the provisions of this chapter pursuant to the findings and legislative policy adopted by the General Assembly, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;

2. To issue orders to enforce the provisions of this chapter, all rules and regulations promulgated thereunder, and the terms and conditions of any permit;

3. To make investigations and inspections to insure compliance with any provision of this chapter or any rules, regulations, or orders promulgated thereunder;

4. To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining;

5. To receive any federal funds, state funds or any other funds and to enter into any contracts, for which funds are available, to carry out the purposes of this chapter.

C. In addition to any administrative remedy granted herein, the Director may petition any court of competent jurisdiction for an injunction against any violation of the provisions of this chapter, and the rules, regulations and orders promulgated hereunder or to compel the performance of acts required thereby without regard to any adequate remedy which may exist at law, such injunction to be issued without bond. However, with regard to the suspension of mining operations, § 45.1-193.1 shall control. (1977, c. 312; 1984, c. 590.)

For this section as in effect until the 1984 amendment by Acts 1984, c. 590 becomes effective, see the bound volume.

Effective date of 1984 amendment. — Acts 1984, c. 590, cl. 7 provides: "That this act shall become effective on January 1, 1985, or when its provisions pertaining to Virginia's permanent regulatory program under the Federal Surface Mine Act are approved by the United States Secretary of the Interior as an amendment to Virginia's program under that Act, whichever later shall occur."

The 1984 amendment substituted "Director" for "Board of Conservation and Economic Development" at the end of subsection A, deleted "of the Department of Conservation and Economic Development" at the end of the first sentence of subsection B, and deleted "Provided" at the beginning of the second sentence of subsection C. For effective date of this amendment, see the note above.

§ 45.1-180.4. Exemption for restricted mining. — Any operator engaging in mining and disturbing less than one acre of land and removing less than five hundred tons of minerals at any particular site, is exempt from all mining permit fees and renewal fees and bond requirements of this chapter; provided, however, each person intending to engage in such restricted mining shall submit an application for a permit, a sketch of the mining site and an operations plan, which shall be adhered to in accordance with §§ 45.1-181 and 45.1-182.1. The Director shall approve the application if he determines that the issuance of the permit shall not violate the provisions of this chapter. (1977, c. 312.)

Article 2.

Regulation of Mining Activity.

§ 45.1-181. Permit required; fee; renewal fee; application; furnishing copy of map, etc., to landowner; approval by Department. — It shall be unlawful for any operator to engage in any mining operation in Virginia, without having first obtained from the Department a permit to engage in such operation and paying a fee therefor of twelve dollars per acre for every acre of land to be affected by the total operation for which plans have been submitted, which shall be deposited in the state treasury in a special fund to be used by the Director for the administration of this chapter. Such permits shall not be transferable. A permit shall be obtained prior to the start of any mining operation. If within ten days of the anniversary date of the permit the Director, after inspection, is satisfied that the operation is proceeding according to the plan submitted to and approved by him, then the Director shall renew the permit upon payment of a renewal fee by the operator of six dollars per acre for land to be affected by the total operation in the next ensuing year. The renewal fees shall be deposited in the state treasury in the special fund set out above. If the operator believes changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation which shall be approved by the Director in the same manner as an original plan and shall be subject to the provisions of this section and §§ 45.1-182.1 and 45.1-183 hereof. A separate permit must be secured for each mining operation conducted. Application for a mining permit shall be made in writing on forms prescribed by the Director and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to such other information as may be reasonably required by the Director shall contain the following information: (1) the common name and geologic title, where applicable, of the mineral to be extracted; (2) a description of the land upon which the applicant proposes to conduct mining operations, which description shall set forth: the name of the county or city in which such land is located; the location of its boundaries and any other description of the land to be disturbed in order that it may be located and distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (3) the name and address of the owner or owners of the surface of the land; (4) the name and address of the owner or owners of the mineral, ore or other solid matter; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) the total number of acres of land to be covered by the permit; (7) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (8) whether any mining permits of any type are now held by the applicant and the number thereof; (9) the name and address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the state of incorporation and the name and address of its registered agent, if a corporation; or the name and address of the trustee, if a trust; and (10) if known, whether the applicant, or any subsidiary or affiliate or any partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a mining permit of any type issued under the laws of this or any other state revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited.

The application for a permit shall be accompanied by two copies of an accurate map or aerial photograph or plan and meeting the following requirements:

(a) Be prepared by a licensed engineer or licensed land surveyor or issued by a standard mapping service or in such a manner as to be acceptable to the Director;

(b) Identify the area to correspond with the land described in the application;

(c) Show adjacent deep mining, if any, and the boundaries of surface properties, with the names of owners of the affected area which lie within a hundred feet of any part of the affected area;

(d) Be drawn to a scale of four hundred feet to the inch or better;

(e) Show the names and location of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area affected and within 500 feet of such area;

(f) Show by appropriate markings the boundaries of the area of land affected, the outcrop of the seam at the surface or deposit to be mined, and the total number of acres involved in the area of land affected;

(g) Show the date on which the map was prepared, the north arrow and the quadrangle name;

(h) Show the drainage plan on and away from the area of land affected, including the directional flow of water, constructed drainways, natural waterways used for drainage and the streams or tributaries receiving the discharge.

Upon receipt of a written request by any landowner on whose property a sand and gravel operation is permitted pursuant to this section, the operator of the sand and gravel operation shall provide a copy of the map, photograph or plan to the landowner.

No permit shall be issued by the Department until the Director has approved the plan of operation required in this section and § 45.1-182.1 and the bond from the applicant as required in § 45.1-183. (1968, c. 734; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1983, c. 322.)

The 1983 amendment inserted the next-to-last paragraph and substituted "Virginia" for "this State" in the first sentence of the first paragraph.

§ 45.1-182.1. (For effective date see note) Operations plan; reclamation; policy of Director. — A. The application for a permit shall be accompanied by an operations plan in such form and with such accompanying material as the Director shall require. The operations plan shall describe the specifications for surface grading and restoration, including sketches delineating placement of spoil, stockpiles, and tailing ponds, to a surface that is suitable for the proposed subsequent use of the land after reclamation is completed.

B. The operations plan shall include a provision for reclamation of all land estimated to be affected by the mining operation for which the permit is sought. The reclamation provision shall be in such form and contain such accompanying material as the Director shall require and shall state:

1. The planned use to which the affected land is to be returned through reclamation;

2. Proposed actions to assure suitable reclamation of the affected land for the planned use to be carried out by the applicant as an integral part of the proposed mining operation and to be conducted simultaneously insofar as practicable. The Director shall set schedules for the integration of reclamation with the mining operation according to the various individual mineral types.

C. It shall be the policy of the Director to encourage adoption of productive land use, such as pasture, agricultural use, recreational areas, sanitary landfills, forestry and timberland operations, industrial and building sites, and to consider the general original contour in determining the particular reclamation program for the acreage. The Director may require an amendment to the operations plan to meet the exigencies of any unanticipated circumstance or event. (1977, c. 312; 1984, c. 590.)

For this section as in effect until the 1984 amendment by Acts 1984, c. 590 becomes effective, see the bound volume.

Effective date of 1984 amendment. — Acts 1984, c. 590, cl. 7 provides: "That this act shall become effective on January 1, 1985, or when its provisions pertaining to Virginia's permanent regulatory program under the Federal Surface Mine Act are approved by the United States Secretary of the Interior as an amendment to Virginia's program under that Act, whichever later shall occur."

The 1984 amendment substituted "Director" for "Board" near the beginning of the second sentence of subdivision B 2. For effective date of this amendment, see the note above.

§ 45.1-183. **Bond of operator.** — Each operator at the time of filing his application shall furnish bond on a form to be prescribed by the Director payable to the Department and conditioned that the operator shall faithfully perform all of the requirements of this chapter and of the operations plan as approved and directed by the Department. The amount of bond shall be no less than two hundred dollars nor more than one thousand dollars per acre, based upon the number of acres of land which the operator estimates will be affected by mining operations during the next ensuing year. The minimum amount of bond furnished shall be one thousand dollars, except in areas of five acres or less the bond shall be no less than two hundred dollars nor more than one thousand dollars per acre. Such bond shall be executed by the operator and by a corporate surety licensed to do business in this State; provided, however, that in lieu of such bond the operator may deposit cash or collateral security acceptable to the Director. (1968, c. 734; 1970, c. 245; 1972, c. 206; 1974, c. 312; 1977, c. 312.)

Cross reference. — As to release of bonds and other securities posted pursuant to this section, see § 45.1-197.10.

Code Commission note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 45.1-184. **Review of operations plan and reclamation provision by Director; issuance of permit.** — Upon receipt of a reasonable operations plan and bond prescribed above, the Director shall review the plan and if it meets with his approval issue a permit. If the Director disapproves the plan, he shall furnish the applicant with his written objections thereto and his required amendments. Until the applicant shall amend his operations plan to meet the Director's reasonable objections and file a satisfactory amended plan with the Director, no permit shall be issued.

In reviewing such plan, if the Director finds that the operation will constitute a hazard to the public safety or welfare, or that a reasonable degree of reclamation or proper drainage control is not feasible, he may disapprove the permit application. Provided, however, that the Director may approve the permit after deleting the areas from the permit application held to be objectionable in the Director's findings.

The Director shall issue the permit unless he finds that the applicant has had control or has had common control with a person, partnership, association, trust or corporation which has had a mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, in which event no permit shall be issued. Except, however, if an operator who has heretofore forfeited a bond within thirty days of notice and demand by the Director pays the cost of reclamation in excess of the amount of the forfeited bond, or if any bond is forfeited and the amount forfeited is equal to or greater than the cost of reclamation, such operator shall then become eligible for another permit.

§ 45.1-184.1. Application for permit; adjoining landowners; local official. — A. The application for a permit shall be accompanied by a statement showing the names and addresses of the owners of property within one thousand feet of the property line of any land proposed to be permitted and certification that such landowners have been notified by certified mail of the application for a permit unless notified previously. Such residents may file written objections with the Director, and may request a hearing. This section shall apply to initial applications for permits only, and no new notice shall be required for renewal applications or for permits for acreage in addition to that originally permitted.

B. The application for the permit shall also be accompanied by a statement certifying that the chief administrative official of the local political subdivision has been notified of the proposed operation by certified mail. (1977, c. 312.)

Law Review. — For survey of Virginia law on property for the year 1976-77, see 63 Va. L. Rev. 1472 (1977).

§ 45.1-184.2. Succession of one operator by another at uncompleted project. — Where one operator succeeds another at any uncompleted operation, whether by sale, assignment, lease, merger, or otherwise, the Director may release the first operator from all liability under this chapter as to that particular operation; provided, however, that the successor operator has been issued a permit and has otherwise complied with the requirements of this chapter, and the successor operator assumes as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the first operator. No fee, or any portion thereof, paid by the first operator shall be returned to either operator. The permit fee for the successor operator for the area of land permitted by the first operator shall be six dollars per acre, except as provided by § 45.1-180.4. The mining permit for the successor operator shall be valid for one year from the date of issuance and shall be renewed thereafter in accordance with the provisions of this chapter. (1977, c. 312.)

§ 45.1-185. Additional bond to be posted annually; release of previous bond; report of reclamation work. — Within ten days following the anniversary date of any permit, the operator shall post additional bond in the amount of no less than two hundred dollars nor more than one thousand dollars per acre for each acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit. Bond or other security previously posted shall be released for the areas disturbed in the last twelve months if reclamation work has been completed or transferred to additional acres to be disturbed. The approval of the Director to release the bond shall be obtained in accordance with the following:

The operator shall file with the Department a written report on a form to be prescribed by the Department stating under oath that reclamation has been completed on certain lands and submit the following:

(a) Identification of the operation; (b) the county or city in which it is located and its location with reference to the nearest public highway; (c) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable it to be located and distinguished from other lands; (d) an accurate map or plan prepared by a licensed land surveyor or licensed engineer or issued by a standard mapping service or in such manner as to be acceptable to the Director showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area and the methods of access to the area from the nearest public highway.

§ 45.1-186.1. Notice of noncompliance served on operator. — The Director may cause a notice of noncompliance to be served on the operator whenever the operator fails to obey any order by the Director to:

1. Apply the control techniques and institute the actions approved in his operations and reclamation plan;

2. Comply with any required amendments to the operations or reclamation plan; or

3. Comply with any other requirement of this chapter or any rules or regulations promulgated pursuant thereto which affect the health, safety and welfare of the Commonwealth.

A copy of the notice shall be delivered to the operator or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to obey the order of the Director and shall require the operator to comply with the order within a reasonable period of time as fixed by the Director, following service of the notice. If the operator has not complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the Director shall revoke the permit and declare the forfeiture of the entire bond, which, when collected, shall be deposited in the State treasury in a special reclamation fund to be used by the Director in performing reclamation under the provisions of this chapter. After completion of the reclamation and payment of all fees as required by this chapter, any additional funds from the forfeiture: (i) of the bond shall be returned to the corporate surety; or (ii) of the collateral security, certified check or cash that has been deposited in lieu of bond, shall be returned to the person who provided it originally or to the operator. If the operator files with the Director notice that he will appeal the order revoking the permit and declaring a forfeiture to the Board of Surface Mining Review, then the Director's orders under this section shall be held in abeyance until the appeal is determined by the Board of Surface Mining Review. (1977, c. 312.)

Cross reference. — As to forfeiture of payments made to the Minerals Reclamation Fund upon revocation of a permit under this section, see § 45.1-197.12.

§ 45.1-187. Additional bond to cover amended estimate of land to be disturbed. — If, during any operation, it is found that the operator's estimate of the amount of disturbed land for which bond or other security has been posted for reclamation is less than the actual area disturbed, the Director shall order the operator to file additional bond or security sufficient to cover an amended estimate of land to be disturbed by such operation.

§ 45.1-188. Interference with reclamation unlawful; other mining operations on land. — It shall be unlawful for any owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligations to the State for the reclamation of lands disturbed by him. If the owner or owners of surface rights or the owner or owners of mineral rights desire to conduct other mining operations on lands disturbed by the operator furnishing bond hereunder, such owner or other person shall be in all respects subject to the provisions of this chapter and the Director shall then release an equivalent amount of bonds to the operator originally furnishing bond on the disturbed area. (1968, c. 734; 1974, c. 312.)

§ 45.1-191. Penalty for violation of chapter, etc. — Any violation of any provision of this chapter or of any order of the Director shall be a misdemeanor punishable by a maximum fine of one thousand dollars or a maximum of one year in jail, or both. (1968, c. 734; 1974, c. 312.)

§ 45.1-193.1. Injunction prohibiting mining operation. — Whenever adverse ecological disruptions or the injurious effects thereof seriously threaten or endanger the health, safety, welfare and property rights of citizens of Virginia, and abatement is not feasible by the application of control techniques, the Director shall petition the appropriate circuit court for an injunction to prohibit further operations. Such injunction shall not relieve the operator from his duty to reclaim lands previously affected according to the terms and conditions of this permit. (1977, c. 312.)

§ 45.1-197. Local standards and regulations; waiver of application of chapter; review for strict compliance with chapter. — Counties, cities and towns may establish standards and adopt regulations dealing with the same subject, provided, however, such standards and regulations shall not be below those adopted by the Director.

This chapter shall not be construed to repeal any local ordinance or regulation or charter provision now in effect in any county, city or town where the provisions are not less than the standards adopted by the Director. The Director may waive the application of this chapter if, in his opinion, a county, city or town in which mining operations are being conducted has enacted and is enforcing zoning ordinances dealing with the subject matter, prescribing standards and regulations not below those set forth in this chapter. If the Director waives the provisions hereof, the operator shall comply strictly with all the provisions of the ordinances of such counties, cities and towns in which his operations are located.

The Director may also waive the application of this chapter as to any mining or borrow pit operation which is conducted solely and exclusively for a State project and which is subject by contract to the control and supervision of a State agency, provided regulations satisfactory to the Director have been promulgated and are incorporated in any contract for such removal.

The county, city, town or State agency shall assure strict compliance with all the provisions of the ordinances, regulations or contracts and the Director shall from time to time review the ordinances, regulations or contracts and the enforcement programs to assure compliance with this chapter. If the Director determines that there is not strict compliance with this chapter, then he may rescind his waiver of the application of this chapter.

§ 45.1-197.3. Definition. — For the purpose of this article, the term "orphaned lands" shall mean lands disturbed by surface mining of minerals other than coal operations which were not required by law to be reclaimed or which have not been reclaimed. (1978, c. 634.)

§ 45.1-197.4. Survey; priorities for reclamation. — The Director shall cause a survey to be conducted to determine the extent of the orphaned lands in this Commonwealth and shall establish priorities for the reclamation thereof. (1978, c. 634.)

§ 45.1-197.5. Agreements with owners or lessees; reclamation by Director. — The Director is authorized to enter into agreements with owners or lessees of orphaned lands when the owners agree to the reclamation of such lands by the Division to the extent and in the manner deemed appropriate or reasonable by the Director. In no event shall the Director return orphaned land to other than the minimum potential use thereof which obtained prior to the initiation of mining operations unless the landowner or owners, lessee or lessees, agree to bind himself or themselves to the payment of the additional cost upon such terms as the Director deems reasonable. In entering into such agreements, the Director shall be guided by the priorities for reclamation established by him, but in no event shall the Director enter into such agreement unless funds are immediately available for the performance of the agreement by the Director as hereinafter provided. (1978, c. 634.)

Approval By the State Corporation Commission of Electrical Utility Facilities

§ 56-46.1. Commission to consider environmental factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings. — Whenever under any provision of law whatsoever, applicable to the Commission, the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In such proceedings it shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 4 (§ 15.1-446.1 et seq.) of Chapter 11 of Title 15.1 of the Code of Virginia.

No overhead electrical transmission line of 150 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice by publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, and written notice to the governing body of each such county and municipality, approve such line. As a condition to approval the Commission shall determine that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic and environmental assets of the area concerned. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be designated by the Commission. Such approval shall not be required for transmission lines constructed prior to January 1, 1983, for which the Commission has issued a certificate of convenience and necessity. In the hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company. For purposes of this section, "interested parties" shall include the governing bodies of any counties or municipalities through which the line is proposed to be built, and persons residing or owning property in each such county or municipality and "environmental" shall be deemed to include in meaning "historic."

Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 15.1-456 and local zoning ordinances with respect to such transmission line.

Approval By the State Corporation Commission of New Generation Facilities

§ 56-234.3. Approval of expenditures for and monitoring of new generation facilities and projected operation programs of electric utilities. — Prior to construction or financial commitments therefor, any electric utility subject to the jurisdiction of the State Corporation Commission intending to construct any new generation facility capable of producing 100 megawatts or more of electric energy shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction and the necessity therefor in relation to its projected forecast of programs of operation. Such petition shall include (i) the utility's preliminary construction plans, (ii) the methods by which the work will be contracted, by competitive bid or otherwise, (iii) the names and addresses of the contractors and subcontractors, when known, proposed to do such work, and (iv) the plan by which the public utility will monitor such construction to ensure that the work will be done in a proper, expeditious and efficient manner. The Commission, upon receipt of the petition, shall order that a public hearing be held to assist it in accumulating as much relevant data as possible in reaching its determination for the necessity of the proposed generation facility. The Commission shall review the petition, consider the testimony given at the public hearing, and determine whether the proposed improvements are necessary to enable the public utility to furnish reasonably adequate service and facilities at reasonable and just rates. After making its determination, the Commission shall enter an order within nine months after the filing of such petition either approving or disapproving the proposed expenditure. Upon approval, the Commission shall set forth in its order terms and conditions it deems necessary for the efficient and proper construction of the generation facility.

Every electric utility capable of producing 100 megawatts or more of electric energy shall annually file with the Commission a five and ten-year projected forecast of its programs of operation. Such a forecast shall include, but not be limited to, the anticipated required capacity to fulfill the requirements of the forecast, how the utility will achieve such capacity, the financial requirements for the period covered, the anticipated sources of those financial requirements, the research and development procedures, where appropriate, of new energy sources, and the budget for the research and development program.

In addition, the Commission shall investigate and monitor the major construction projects of any public utility to assure that such projects are being conducted in an economical, expeditious, and efficient manner.

Whenever uneconomical, inefficient or wasteful practices, procedures, designs or planning are found to exist, the Commission shall have the authority to employ, at the sole expense of the utility, qualified persons, answerable solely to the Commission, who shall audit and investigate such practices, procedures, designs or planning and recommend to the Commission measures necessary to correct or eliminate such practices, procedures, designs or planning.

Consistent with § 56-235.3, any public utility, electric or otherwise, seeking to pass through the cost of any capital project to its customers, shall have the burden of proving that such cost was incurred through reasonable, proper and efficient practices, and to the extent that such public utility fails to bear such burden of proof, such costs shall not be passed on to its customers in its rate base.

The Commission shall have the authority to approve, disapprove, or alter the utility's program in a manner consistent with the best interest of the citizens of the Commonwealth. The petitioning or filing public utility may appeal the decision of the Commission to the Supreme Court of Virginia.

§ 62.1-1. **Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common.** — All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of this Commonwealth, and not conveyed by special grant or compact according to law, shall continue and remain the property of the Commonwealth of Virginia, and may be used as a common by all the people of the State for the purpose of fishing and fowling, and of taking and catching oysters and other shellfish, subject to the provisions of Title 28.1, and any future laws that may be passed by the General Assembly. And no grant shall hereafter be issued by the State Librarian to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether the bed, rock or shoal shall ebb bare or not. (Code 1950, § 62-1; 1960, c. 533; 1968, c. 659.)

§ 62.1-3. **Authority required for use of subaqueous beds.** — It shall be unlawful and constitute a Class 1 misdemeanor for anyone to build, dump, or otherwise trespass upon or over or encroach upon or take or use any materials from the beds of the bays and ocean, rivers, streams, creeks, which are the property of the Commonwealth, unless such act is pursuant to statutory authority or a permit by the Marine Resources Commission. Statutory authority is hereby conferred for the doing of such acts as are necessary for (1) the erection of dams, the construction of which has been authorized by proper authority; (2) the uses of subaqueous beds authorized under the provisions of Title 28.1 of the Code; (3) the construction and maintenance of congressionally approved navigation and flood-control projects undertaken by the United States Army Corps of Engineers, United States Coast Guard, or other federal agency authorized by Congress to regulate navigation, navigable waters, or flood control; (6) fills by riparian owners opposite their property to any lawfully established bulkhead line, provided that such owners have been granted, prior to July 1, 1972, a certificate of assurance from the State Water Control Board pursuant to § 21 (b) of the Water Quality Improvement Act of 1970; (9) piers, docks, marine terminals and port facilities owned or leased by or to the Commonwealth or a political subdivision thereof; (10) the placement of private piers for noncommercial purposes by owners of the riparian lands in the waters opposite such riparian lands, provided such private piers shall not extend beyond the navigation line or lawful private pier lines established by proper authority; and (11) causing the removal of silt and other waste material inside any lawfully established bulkhead line by riparian owners opposite their property incident to the construction and use of any graving dock, drydock or other shipbuilding facilities, where such owners have obtained prior to July 1, 1972, a certificate of assurance from the State Water Control Board pursuant to § 21 (b) of the Water Control Improvement Act of 1970.

The Marine Resources Commission shall have the authority to issue permits for all other reasonable uses of state-owned bottomlands, including but not limited to, the taking and use of material, the placement of wharves, bulkheads, dredging and fill, by owners of riparian lands, in the waters opposite such riparian lands, provided that such wharves, bulkheads and fill shall not extend beyond any lawfully established bulkhead line.

The Marine Resources Commission is hereby authorized and empowered, but not in conflict with the United States Corps of Army Engineers, to establish bulkhead lines and lawful private pier lines on or over bays, rivers, creeks, streams and the shores of the ocean, to the extent owned by or subject to the jurisdiction of the Commonwealth for that purpose, and to issue and publish maps and plats showing such lines.

The Marine Resources Commission shall have the authority to issue permits for recovery of underwater historic property pursuant to this section and § 10-145.9 of the Code of Virginia.

The permits issued by the Marine Resources Commission shall be in writing and shall specify such conditions, terms and royalties as the Marine Resources Commission deems appropriate.

In granting or denying any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Section 1 of Article XI of the Constitution of Virginia, and shall consider, among other things, the effect of the proposed project upon other reasonable and permissible uses of state waters and state-owned bottomlands, its effect upon the marine and fisheries resources of the Commonwealth, its effect upon the wetlands of the Commonwealth, except when its effect upon said wetlands has been or will be determined under the provisions of Chapter 2.1 (§ 62.1-13.1 et seq.) of this title, and its effect upon adjacent or nearby properties, its anticipated public and private benefits, and, in addition thereto, the Commission shall give due consideration to standards of water quality as established by the State Water Control Board.

No permit for a marina or boatyard for commercial use shall be granted unless the owner or other applicant prior to issue presents a plan for sewage treatment or disposal facilities which is approved by the State Department of Health. The Marine Resources Commission shall consult with any state agency, including the Virginia Institute of Marine Science, the Water Control Board, the State Department of Highways and Transportation and the State Corporation Commission whenever the decision of the Marine Resources Commission on an application for a permit relates to or affects the particular concerns or activities of other state agencies.

A fee of twenty-five dollars shall be paid for issuing each such permit as charge for such permit, but if the cost for the project or facility is to be more than $10,000, the fee paid shall be $100. A fee of twenty-five dollars shall be paid for issuing each permit for recovery of underwater historic property. When the activity or project for which a permit is requested involves the removal of bottom material, the application shall so state and the Marine Resources Commission shall specify in each such permit issued a royalty of not less than twenty cents per cubic yard for new removal, provided that no royalty for the removal of bottom material shall exceed the amount of sixty cents per cubic yard of material removed. In fixing the amount of royalty to be paid for removal of bottom material, the Commission shall consider, among other things, the primary and secondary purposes of the removal of bottom material, whether the material has any commercial value and whether it will be used for any commercial purpose, the use to be made thereof and any public benefit or any adverse effect upon the public in connection with the removal or disposal, the physical characteristics of the material removed, and the expense of its removal and disposal. Nothing contained herein shall preclude the imposition of additional assessments not to exceed an amount treble the normal permit fee and royalties provided above where it appears that the project or facility for which an application for permit is made has been completed or work thereon already commenced at the time such application is made. Bottom material removed attendant to maintenance dredging shall be exempt from any royalty.

The Virginia Department of Highways and Transportation shall be exempt from all such fees and royalties otherwise assessable pursuant to this section.

All counties, cities and towns of the Commonwealth shall be exempt from permit fees and royalties other than the permit issuing fee; provided that a permit as required under this section be issued prior to the commencement of any of the work to be accomplished under said permit.

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

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

Any person aggrieved by a decision of the Marine Resources Commission pursuant to this section shall have the right to judicial review of said decision as provided in § 28.1-33 of the Code of Virginia.

§ 62.1-4. Granting easements in, and leasing of, the beds of certain waters. — The Marine Resources Commission, with the approval of the Attorney General and the Governor, may grant easements in, and may lease, the beds of the waters of the State, without the Baylor Survey. Every such easement or lease may be for a period not exceeding five years, may include the right to renew the same for an additional period not exceeding five years each and shall specify the rent royalties and such other terms deemed expedient and proper. Such easements and leases may, in addition to any other rights, authorize the grantees and lessees to prospect for and take from the bottoms covered thereby, oil, gas, and such other minerals and mineral substances as are therein specified; provided, that no such easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the State concerning fishing, fowling, and the catching and taking of oysters and other shellfish, in and from the bottoms so leased, and the waters covering the same. All easements granted and leases made under the authority granted by this section, shall be executed in the name and for and on behalf of the State, by the Attorney General, and shall be countersigned by the Governor. All rents or royalties collected from such easements or leases shall be paid into the state treasury to the credit of the Special Public Oyster Rock Replenishment Fund for the purposes of such fund. Expenditures and disbursements of all sums from such fund shall be made as provided in § 62.1-3. The Commissioner of Marine Resources and the Attorney General shall make reports to the General Assembly of all such easements granted or leases so made, such reports to be made on or before the first day of December preceding the convening of each regular session thereof.

WETLANDS POLICIES

§ 62.1-13.1. Declaration of policy. — The Commonwealth of Virginia hereby recognizes the unique character of the wetlands, an irreplaceable natural resource which, in its natural state, is essential to the ecological systems of the tidal rivers, bays and estuaries of the Commonwealth. This resource is essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and flora; is valuable as a protective barrier against floods, tidal storms and erosion of the shores and soil within the Commonwealth; is important for the absorption of silt and of pollutants; and is important for recreational and aesthetic enjoyment of the people for the promotion of tourism, navigation and commerce.

Continued destruction of Virginia's coastal wetlands will greatly contribute to the pollution of the Commonwealth's rivers, bays and estuaries; will diminish the abundance of Virginia's marine and inland animals and waterfowl, finfish, shellfish and flora as sources of food, employment and recreation for the people of Virginia; will increase costs and hazards associated with floods and tidal storms; and will accelerate erosion and the loss of lands productive to the economy and the well-being of our citizens.

Therefore, in order to protect the public interest, promote the public health, safety and the economic and general welfare of the Commonwealth, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is declared to be the public policy of this Commonwealth to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation. (1972, c. 711.)

§ 62.1-13.2. Definitions. — For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

(a) *"Commission"* means the Virginia Marine Resources Commission.

(b) *"Commissioner"* means the Commissioner of Marine Resources.

(c) *"Person"* means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

(d) *"Tidewater Virginia"* means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

(e) *"Governmental activity"* means any or all of the services provided by the Commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights, and construction of public buildings.

(f) *"Vegetated wetlands"* means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in the county, city or town in question; and upon which is growing on July 1, 1972, or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia spp.), sea lavender (Limonium spp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile edentula), southern wildrice (Zizaniopsis miliacea), cattails (Typha spp.), three-squares (Scirpus spp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), smartweeds (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis) and switch grass (Panicum virgatum).

The vegetated wetlands of Back Bay and its tributaries and the vegetated wetlands of the North Landing River and its tributaries shall mean all marshes subject to flooding by normal tides, including wind tides, provided this shall not include hurricane or tropical storm tides and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattails (Typha spp.), three-squares (Scirpus spp.), dock (Rumex sp.), smartweed (Polygonum sp.), yellow pond lily (Nuphar sp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis) and switch grass (Panicum virgatum).

(g) *"Wetlands board"* or *"Board"* means a board created as provided in § 62.1-13.6.

(h) *"Wetlands zoning ordinance"* means that ordinance set forth in § 62.1-13.5.

(i) *"County, city or town"* shall mean the governing body of such county, city or town.

(j) *"Back Bay and its tributaries"* means the following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State line; Capsies Creek north of the Virginia-North Carolina State line; Deal Creek:

Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

(k) *"North Landing River and its tributaries"* means the following as based on United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Pocaty River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

(l) *"Nonvegetated wetlands"* means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined herein and also includes those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal tides including wind tides but not including hurricane or tropical storm tides.

(m) *"Wetlands"* means both vegetated and nonvegetated wetlands.

§ 62.1-13.3. Standards for use and development of wetlands; utilization of guidelines. — The following standards shall apply to the use and development of wetlands and shall be considered in the determination of whether applications required by this chapter should be granted or denied:

(1) Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed;

(2) Development in Tidewater Virginia, to the maximum extent practical, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed before July 1, 1972, in nonvegetated wetlands as described herein which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia apart from the wetlands.

(3) The provisions of the guidelines promulgated by the Commission pursuant to § 62.1-13.4 of this Code shall be considered in applying the foregoing standards.

§ 62.1-13.4. Marine Resources Commission to develop guidelines. — In order to implement the policy set forth in § 62.1-13.1 and to assist counties, cities or towns in regulation of vegetated and nonvegetated wetlands, the Commission shall, with the advice and assistance of the Virginia Institute of Marine Science, which will evaluate wetlands by type and maintain a continuing inventory of vegetated wetlands, from time to time promulgate in accordance with the Administrative Process Act [§ 9-6.14:1 et seq.] guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and which set forth the consequences of use of these wetlands types. In developing guidelines, the Commission shall consult with any affected state governmental agency.

§ 62.1-13.5. Counties, cities and towns authorized to adopt wetlands zoning ordinance; terms of ordinance. — Any county, city or town may adopt the following ordinance, which, after January 1, 1983, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate.

Upon notification by any county, city or town that such ordinance has been adopted, the Commission shall immediately forward to the wetlands board of such county, city or town any application then pending before the Commission over which that wetlands board would have had jurisdiction, had such ordinance been in effect at the time of filing by the applicant; however, if so requested by the applicant, such application shall remain within the jurisdiction of the Commission.

WETLANDS ZONING ORDINANCES

§ 1. The governing body of ....., acting pursuant to Chapter 2.1 of Title 62.1 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this ordinance regulating the use and development of wetlands.

§ 2. Definitions. — For the purposes of this ordinance:

(a) "Commission" means the Virginia Marine Resources Commission.

(b) "Commissioner" means the Commissioner of Marine Resources.

(c) "Person" means any corporation, association or partnership, one or more individuals, or any unit of government or agency thereof.

(d) "Governmental activity" means any or all of the services provided by this ..... to its citizens for the purpose of maintaining this ..... and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public buildings.

(e) "Vegetated wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this ..... ; and upon which is growing on the effective date of this act or grown thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia sp.), sea lavender (Limonium sp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile edentula), southern wildrice (Zizaniopsis miliacea), cattails (Typha spp.), three-squares (Scirpus spp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex sp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), smartweed (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), and switch grass (Panicum virgatum).

The vegetated wetlands of Back Bay and its tributaries and the vegetated wetlands of the North Landing River and its tributaries shall mean all marshes subject to flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides, and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattails (Typha spp.), three-squares (Scirpus spp.), dock (Rumex sp.), smartweed (Polygonum sp.), yellow pond lily (Nuphar sp.),

royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), and switch grass (Panicum virgatum).

(f) "Wetlands board" or "board" means a board created as provided in § 62.1-13.6 of the Code of Virginia.

(g) "Back Bay and its tributaries" means the following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State line; Capsies Creek north of the Virginia-North Carolina State line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

(h) "North Landing River and its tributaries" means the following as based on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Pocaty River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

(i) "Nonvegetated wetlands" means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined herein and also includes those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by tides including wind tides but not including hurricane or tropical storm tides.

(j) "Wetlands" means both vegetated and nonvegetated wetlands.

§ 3. The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

(a) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

(b) The cultivation and harvesting of shellfish, and worms for bait;

(c) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting preserves; provided that no structure shall be constructed except as permitted in subsection (a) of this section;

(d) The cultivation and harvesting of agricultural, forestry or horticultural products; grazing and haying;

(e) Conservation, repletion and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, Commission of Game and Inland Fisheries and other related conservation agencies;

(f) The construction or maintenance of aids to navigation which are authorized by governmental authority;

(g) Emergency decrees of any duly appointed health officer of a governmental subdivision acting to protect the public health;

(h) The normal maintenance, repair or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, State, county, city or town abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

(i) Governmental activity on wetlands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof; and

(j) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered; and provided further, that this paragraph shall not be deemed to authorize construction of any drainage ditch.

§ 4. (a) Any person who desires to use or develop any wetland within this (county, city or town), other than for those activities specified in § 3 above, shall first file an application for a permit with the wetlands board directly or through the Commission.

(b) An application shall include the following: the name and address of the applicant; a detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale, showing the area of wetland directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; and estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.

(c) A nonrefundable processing fee to cover the cost of processing the application, set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved, shall accompany each application.

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

§ 6. Not later than sixty days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the Commissioner, the owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, Water Control Board, the Department of Highways and Transportation and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this ..... (county, city or town). The costs of such publication shall be paid by the applicant.

§ 7. In acting on any application for a permit, the board shall grant the application upon the concurring vote of three members of a five-member board or four members of a seven-member board. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within thirty days from the

hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such determination and if the board has not made a determination, it shall notify the applicant and the Commission that thirty days has passed and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this ..... (county, city or town).

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. (a) In making its decision whether to grant, to grant in modified form, or to deny an application for a permit the board shall base its decision on these factors:

(1) Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.

(2) Impact of the development on the public health and welfare as expressed by the policy and standards of Chapter 2.1 of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission.

(b) If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate or tend to violate the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this ..... (county, city or town), to provide governmental services and on the rights of any other person and to carry out the public policy set forth in Chapter 2.1 of Title 62.1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

§ 10. The permit shall be in writing, signed by the chairman of the board and notarized.

§ 11. No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions.

§ 12. No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinances of this ..... (county, city or town). (1972, c. 711; 1973, cc. 382, 388; 1975, c. 268; 1979, c. 418; 1982, c. 300.)

§ 62.1-13.6. Appointment, terms, compensation, etc., of local wetlands boards; jurisdiction of county wetlands board over wetlands in town. — A. In and for any county, city or town which has enacted or enacts a wetlands zoning ordinance pursuant to this chapter, there shall be created a wetlands board, which shall consist of five or seven residents of the county, city or town appointed by the governing body of the county, city or town. All terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The chairman of the board shall notify the governing body at least thirty days in advance of the expiration of any term of office, and shall also notify the governing body promptly if any vacancy occurs. Such vacancies shall be filled by the governing body without delay upon receipt of such notice. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may serve successive terms. Members of the board shall hold no other public office in the county or city except that they may be members of the local planning or zoning commission, directors of soil and water conservation boards, or local erosion commissions, or of the local board of zoning appeals. A member whose term expires shall continue to serve until his successor is appointed and qualified. When such members are appointed to a local wetlands board, their terms of appointment shall be coterminous with their membership on the local planning or zoning commission, soil and water conservation boards, or local erosion commissions or on the local board of zoning appeals.

B. If a town does not enact a wetlands zoning ordinance within one year from the time the county in which the town is found enacts a wetlands zoning ordinance, application for wetlands found in the town shall be made to the county wetlands board.

C. Any county, city or town which appoints a local wetlands board pursuant to this section may compensate the members of the board in accordance with such terms and conditions as the locality may prescribe.

§ 62.1-13.7. Officers, meetings, rules, etc., of wetlands boards; records and reports. — The board shall elect from its membership a chairman and such other officers as it deems necessary who shall serve one-year terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than three members of a five-member board, or four members of a seven-member board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the county, city or town and general laws of the Commonwealth, including this chapter. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body at least once each year, and a copy of its report to the Commission.

§ 62.1-13.8. Local governing body to supply meeting space and services for wetlands board; removal of board member. — The governing body of the county, city or town creating a wetlands board shall supply reasonable meeting space for the use of the board and such reasonable secretarial, clerical, legal and consulting services as may be needed by the board. The local governing body is authorized to expend the necessary public funds. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the governing body which appointed him, after hearing held after at least fifteen days' notice.

§ 62.1-13.9. Permits required for certain activities; issuance of permits by Commission. — No person shall conduct any activity which would require a permit under a wetlands zoning ordinance unless he has a permit therefor. Until such time as the county, city or town in which a person proposes to conduct an activity which would require a permit under a wetlands zoning ordinance adopts the wetlands zoning ordinance such person shall apply for a permit directly to the Commission except as provided in § 62.1-13.6 (b). If an applicant desires to use or develop wetlands owned by the Commonwealth, he shall apply for a permit directly to the Commission and in addition to the application fee required by the wetlands zoning ordinance, he shall pay such fees and royalties as provided in § 62.1-3.

The Commission shall process such application in accordance with the provisions of the wetlands zoning ordinance and the Commissioner shall sign such permit; provided, however, that the Commission shall have the authority to designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required in § 62.1-13.5, and thereafter report such findings and recommendations to the Commission. (1972, c. 711.)

§ 62.1-13.10. Commissioner of Marine Resources to review all decisions of wetlands boards. — The Commissioner shall review all decisions of the wetlands board and notify the Commission of any decision which in his opinion should be reviewed by the Commission. (1972, c. 711.)

§ 62.1-13.11. When Commission to review decision of wetlands board. — The Commission shall review a decision of a wetlands board made under a wetlands zoning ordinance when:

(1) An appeal is taken from such decision by the applicant for a permit or by the county, city or town where the wetlands are located; or

(2) The Commissioner requests such review. The Commissioner shall request such review only when he reasonably believes that the policy and standards of this chapter have not been adequately achieved or that any guidelines which may have been promulgated by the Commission have not been reasonably accommodated. In order to make such a request, the Commissioner must notify the board and the applicant and the county, city or town where the wetlands are located within ten days of receipt of notice to the Commissioner of the decision of the board.

(3) Twenty-five or more freeholders of property within the county, city or town in which the proposed project is located sign and submit a petition to the Commission, provided, such petition must include a statement of particulars setting forth those specific instances wherein the petitioners do allege that the board did fail to follow the policy, standards or guidelines of this chapter.

(4) Where not otherwise provided, the foregoing requests for review or appeal shall be made within ten days from date of initial determination by the board; and provided that the Commission shall hear and decide such review or appeal within forty-five days after notice of such review or appeal is received a continuance may be granted by the Commission on a motion of the applicant or the freeholders as specified in § 62.1-13.11 (3) or the county, city or town where the wetlands are located. (1972, c. 711.)

§ 62.1-13.12. Procedure for review. — (a) The Commissioner shall cause notice of the review or appeal to be given to the board, to the applicant, to the freeholders specified in § 62.1-13.11 (3) and to the county, city or town where the wetlands are located.

(b) The Commission shall hear the appeal or conduct the review on the record transmitted by the board to the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the Commission, in its discretion, may receive such other evidence as the ends of justice require. (1972, c. 711.)

§ 62.1-13.13. When Commission to modify, remand or reverse decision of wetlands board. — The Commission shall modify, remand or reverse the decision of the wetlands board:

(1) If the decision of the wetlands board will not adequately achieve the policy and standards of this chapter or will not reasonably accommodate any guidelines which may have been promulgated by the Commission hereunder; or

(2) If the substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions or decisions are

(a) In violation of constitutional provisions; or

(b) In excess of statutory authority or jurisdiction of the wetlands board; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by the evidence on the record considered as a whole; or

(f) Arbitrary, capricious, or an abuse of discretion.

§ 62.1-13.14. Notice of Commission's decision. — The Commission shall notify the parties of its determination within forty-eight hours after the appeal or review. (1972, c. 711.)

§ 62.1-13.14:1. Time for issuance of permit. — No permit shall be issued until the time within which a request for review or an appeal to the Commission may be made has expired; and, if any such request for review or appeal is made, no activity for which such permit is required shall be commenced until the Commission has notified the parties of its determination. (1973, c. 65.)

§ 62.1-13.15. Appeals to courts. — (1) An appeal from any decision of the Commission concerning an application for a permit granted or denied directly by the Commission, or from any decision of the Commission on review of or appeal from a decision of the board may be taken by the applicant, any of the freeholders as set forth in § 62.1-13.11 (3), or by the county, city or town where the wetlands are located, within thirty days after the rendering of such decision of the Commission, to the circuit court having jurisdiction in the governmental subdivision in which the wetlands involved in the decision are located.

(2) Judicial review shall be in accord with the provisions of the Administrative Process Act, (§ 9-6.14:1 et seq.) except that the circuit court shall modify or reverse the decision of the Commission or remand the case for further proceedings:

(a) If the decision of the Commission will not adequately achieve the policy and standards of this chapter or will not reasonably accommodate any guidelines which may have been promulgated by the Commission; or

(b) If the substantial rights of the appellant have been prejudiced because of findings, conclusions or decisions which are

(1) In violation of constitutional provisions; or

(2) In excess of statutory authority or jurisdiction of the Commission; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Unsupported by the evidence on the record considered as a whole; or

(6) Arbitrary, capricious, or an abuse of discretion.

(c) From the final decision of the circuit court an appeal shall lie to the Supreme Court in the manner provided by law for appeals in civil cases. (1972, c. 711; 1982, c. 300.)

§ 62.1-13.16. Investigations and prosecutions. — The Commission shall have the authority to investigate all projects whether proposed or ongoing which alter wetlands. The Commission shall have the power to prosecute all violations of any order, rule, or regulation of the Commission or of a wetlands board, or violation of any provision of this chapter. Wetlands boards shall have the authority to investigate all projects whether proposed or ongoing which alter wetlands located within the city, town or county establishing such wetlands board. Wetlands boards shall have the power to prosecute all violations of any order of such boards, or any violation of any provision of the wetlands zoning ordinance contained in § 62.1-13.5.

§ 62.1-13.17. Commission may receive gifts, etc. — The Commission may receive gifts, grants, bequests, and devises of wetlands and of money which shall be taken and held for the uses prescribed by the donor, grantor, or testator and in accord with the purposes of this chapter. The Commission shall manage such wetlands in such a way as to maximize their ecological value and in accord with the purposes of this chapter. (1972, c. 711.)

§ 62.1-13.18. Violation of orders, rules and regulations. — (a) Any person who knowingly, intentionally, negligently or continually violates any order, rule or regulation of the Commission or of a wetlands board established pursuant to this chapter or violates any provision of this chapter or of a wetlands zoning ordinance enacted pursuant to this chapter or any provision of a permit granted by a wetlands board or the Commission pursuant to this chapter shall be guilty of a misdemeanor. Following a conviction, every day the violation continues shall be deemed a separate offense. (1972, c. 711.)

§ 62.1-13.18:1. Injunctions. — In addition to and notwithstanding the provisions of § 62.1-13.18, upon petition of the Commission or a wetlands board to the court of record having jurisdiction in the city or county wherein any act is done or is threatened to be done which is unlawful under the provisions of this chapter, the court may enjoin such unlawful act and may order the person so acting unlawfully to take such steps as are necessary to restore, protect and preserve the wetlands involved. (1973, c. 65.)

§ 62.1-13.19. Jurisdiction of Commission not affected. — Nothing in this chapter shall affect the Commission's sole jurisdiction over areas and activities as defined by Title 28.1 or § 62.1-3 of this Code. (1972, c. 711.)

§ 62.1-13.20. Exemptions. — Nothing in this chapter shall affect (1) any project in vegetated wetlands commenced prior to July 1, 1972, or any project in nonvegetated wetlands commenced prior to January 1, 1983; however, this section shall not be deemed to exclude from regulation under this chapter any activity which expands or enlarges upon a project already in existence or under construction at the time of such date, except for those activities exempted under § 62.1-13.5 (3) (h); (2) any project or development in vegetated wetlands for which, prior to July 1, 1972, or in nonvegetated wetlands for which, prior to January 1, 1983, a plan or plan of development thereof has been filed pursuant to ordinance or other lawful enactment with either an agency of the federal or state government, or with either the planning commission, board of supervisors, or city council of the jurisdiction in which the project or development is located; (3) any project or development in vegetated wetlands,

whether commenced prior to July 1, 1972, and in nonvegetated wetlands whether commenced prior to January 1, 1983, if located or to be located in whole or in part on ground or in an area an interest in which was authorized by the General Assembly to be conveyed prior to July 1, 1972, for vegetated wetlands and July 1, 1982, for nonvegetated wetlands; and (4) for the North Landing River and its tributaries exemptions (1) and (2) above shall take effect July 1, 1975, for vegetated wetlands, and January 1, 1983, for nonvegetated wetlands.

For exemptions (1) and (2) herein to be effective, the project or development must be certified as exempt by the Commission or appropriate local wetlands board. The request for certification must be filed prior to January 1, 1984. Projects or developments which have been determined by the Commission or the appropriate local wetlands board prior to July 1, 1982, to be exempt from the provisions of this chapter shall be considered to be certified. If the request for certification is not granted or denied within 120 days from receipt of request by the Commission or a local wetlands board, the certification will be conclusively presumed to have been granted. The time limitations and public hearing requirements imposed by § 62.1-13.5 shall not apply to the certification process. Upon request by any person holding a certification issued by the Commission or a local wetlands board, the clerk of the circuit court having jurisdiction over the property on which the certified project is located shall record such certification in the appropriate deed book of the circuit court.

COASTAL PRIMARY SAND DUNES POLICIES

§ 62.1-13.21. Legislative declaration; public policy. — The Commonwealth of Virginia hereby recognizes the importance of coastal primary sand dunes with their unique physiographic features which, in their natural state, serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; that such dunes provide an essential source of natural sand replenishment for beaches and an important natural habitat for coastal fauna; and are important to the overall scenic and recreational attractiveness of Virginia's coastal area.

Inappropriate development on coastal primary sand dunes and reaches can destroy vegetation which stabilizes such features, alter the natural contour of these sand dunes and reaches, impede their natural formation and migration and interrupt wind and water currents which replenish the sand supply of beaches. Such alterations to coastal primary sand dunes and reaches may lead to increased shoreline erosion, coastal flooding, damage to fixed structures near the shore, loss of public and private open space, loss of wildlife habitat and increased expenditure of public funds.

Therefore, in order to reasonably protect the public interest, promote public health, safety, the general welfare of the Commonwealth, protect private and public property from erosion and flooding and protect wildlife and the natural environment, it is declared to be the public policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and reaches and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features.

§ 62.1-13.22. Definitions. — For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

A. *"Commission"* means the Virginia Marine Resources Commission.

B. *"Commissioner"* means the Commissioner of the Virginia Marine Resources Commission.

C. *"County or city"* means the governing body of such county or city.

D. *"Coastal primary sand dune"* means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon any part of which is growing as of July 1, 1980, or grows thereon subsequent thereto, any one or more of the following: American beach grass (Ammophilla breviligulata); beach heather (Hudsonia tometosa); dune bean (Strophostylis umbellata var, paludigena); dusty miller (Artemisia stelleriana); saltmeadow hay (Spartina patens); seabeach sandwort (Arenaria peploides); sea oats (Uniola paniculata); sea rocket (Cakile edentula); seaside goldenrod (Solidago sempervirens); and short dune grass (Panicum amarum). For purposes of this chapter, "coastal primary sand dune" shall not include any mound of sand, sandy soil or dredge soil which has been deposited by man for the purpose of the temporary storage of such material for later use.

E. *"Coastal primary sand dune zoning ordinance"* means that ordinance set forth in § 62.1-13.25 of this Code.

F. *"Governmental activity"* means any or all of the services provided by the Commonwealth or a county or city to its citizens for the purpose of maintaining public facilities and shall include but not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and constructing public buildings.

G. *"Reach"* means a coastal segment of sandy beach fronting on the Chesapeake Bay (i) upon which there is mutual interaction of the forces of erosion, sediment transport and accretion, (ii) whose landward limit, where no coastal primary sand dune can be identified, is defined by the nearest man-made impermeable structure or structures similarly located where a proposed structure is contemplated, or roads or bulkheads and (iii) lies within a county, city or town which is receiving or has received funds under the provisions of Chapter 21 (§ 10-215 et seq.) of Title 10 of the Code. Whenever coastal primary sand dunes are referred to in this chapter such reference shall also include reaches.

§ 62.1-13.23. Standards for use of coastal primary sand dunes. — No permanent alteration of or construction upon any coastal primary sand dune shall take place which would: (i) impair the natural functions of the dune as described herein; (ii) physically alter the contour of the dune; (iii) destroy vegetation growing thereon as defined herein unless the wetlands board, or in its absence the Commission, determines that there will be no significant adverse ecological impact, or that the granting of a permit hereunder is clearly necessary and consistent with the public interest considering all material factors.

§ 62.1-13.24. Guidelines. — In order to implement the policy set forth in § 62.1-13.21 and to assist cities and counties in the regulation of coastal primary sand dunes, the Commission shall, with advice and assistance from the Virginia Institute of Marine Science, promulgate guidelines which set forth the consequences of the use of these dunes. In developing these guidelines, the Commission shall consult with any affected state governmental agency.

§ 62.1-13.25. Certain counties and cities authorized to adopt coastal primary sand dune ordinance. — Any of the following counties or cities which adopt a wetlands ordinance pursuant to § 62.1-13.5 may adopt the ordinance contained herein: the counties of Accomack, Lancaster, Mathews, Northampton and Northumberland and the cities of Hampton, Norfolk, and Virginia Beach. In the event that a locality has not adopted a wetlands ordinance pursuant to Chapter 2.1 (§ 62.1-13.1 et seq.) of Title 62.1, such locality may adopt the ordinance contained herein; however, such locality shall appoint a wetlands board following the procedure specified in § 62.1-13.6.

Coastal Primary Sand Dune Zoning Ordinances

§ 1. The governing body of....., acting pursuant to Chapter 2.2 of Title 62.1 of the Code of Virginia, for the purposes of fulfilling the policy and standards set forth in such chapter, adopts this ordinance regulating the use and development of coastal primary sand dunes.

§ 2. *Definitions.* For the purpose of this ordinance:

A. "Commission" shall mean the Virginia Marine Resources Commission.

B. "Commissioner" shall mean the Commissioner of the Virginia Marine Resources Commission.

C. "County or city" shall mean the governing body of such county or city.

D. "Coastal primary sand dune" hereinafter referred to as "dune," shall mean a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten per centum or greater to less than ten per centum, and upon any part of which is growing on July 1, 1980, or grows thereon subsequent thereto, any one or more of the following: American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tometosa*); dune bean (*Strophostylis umbellata var. paludigena*); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of sand,

sandy soil or dredge soil which has been deposited by man for the purpose of the temporary storage of such material for later use.

E. "Governmental activity" shall mean any or all of the services provided by the Commonwealth or a county or city to its citizens for the purpose of maintaining public facilities and shall include but not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and constructing public buildings.

F. "Wetlands board" or "board" means the board created as provided for in § 62.1-13.6 of the Code of Virginia.

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

A. The construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;

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

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

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

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

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

G. The normal maintenance or repair of presently existing roads, highways, railroad beds and facilities of the United States, this State, or any of its counties or cities, or those of any person, firm, corporation, or utility, provided no coastal primary sand dunes are altered;

H. Outdoor recreational activities, provided that such activities do not alter the natural contour of the coastal primary sand dune or destroy its vegetation;

I. The conservation and research activities of the Virginia Marine Resources Commission, Virginia Institute of Marine Science, Commission of Game and Inland Fisheries and other related conservation agencies;

J. The construction and maintenance of aids to navigation which are authorized by governmental authority;

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

L. Governmental activity on coastal primary sand dunes owned or leased by the Commonwealth of Virginia or a political subdivision thereof.

§ 4. Any person who desires to use or alter any coastal primary sand dune within this ..... (county or city), other than for those activities specified in § 3 herein, shall first file an application with the wetlands board in accordance with § 4 of § 62.1-13.5 of the Code of Virginia. The wetlands board may establish a processing fee in accordance with § 4 of § 62.1-13.5 of the Code of Virginia. No person shall be required to file two separate applications for permits if the project to be undertaken would require that a permit be filed in accordance with § 62.1-13.5 as well as this ordinance. Under such circumstances the fee accompanying the application required by § 62.1-13.5 shall also be the fee for the purpose of this ordinance.

§ 5. All applications and maps and documents relating thereto shall be open for public inspection at the office of the recording officer of this ..... (county or city).

§ 6. Not later than sixty days after receipt of such application, the wetlands boards shall hold a public hearing on such application. The applicant, the local governing body, the Commissioner, the owner of record of any land adjacent to the coastal primary sand dunes in question, known claimants of water rights in or adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Water Control Board, the Department of Highways and Transportation and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this..... (county or city). The costs of such publication shall be paid by the applicant.

§ 7. In acting on any application for a permit, the board shall grant the application upon the concurring vote of three members of a five-member board or four members of a seven-member board. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within thirty days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such determination and if the board has not made a determination, it shall notify the applicant and the Commission that thirty days has passed and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this ..... (county or city).

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. A. In making this decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on the following factors:

1. Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.

2. Impact of the development on the public health and welfare as expressed by the policy and standards of Chapter 2.2 of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission.

B. If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate the purposes and intent of Chapter 2.2 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this ..... (county or city), to provide governmental services and on the rights of any other person and to carry out public policy set forth in Chapter 2.2 of Title 62.1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate the purposes and intent of Chapter 2.2 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

§ 10. The permit shall be in writing, signed by the chairman of the board and notarized.

§ 11. No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions. (1980, c. 660.)

§ 62.1-13.26. Permits required for certain activities; issuance of permits by Commission. — No person shall conduct any activity which would require a permit under a coastal primary sand dune ordinance unless he has a permit therefor. Until such time as the county or city in which a person proposes to conduct an activity which would require a permit under such ordinance adopts such ordinance, such person shall apply for a permit directly to the Commission. (1980, c. 660.)

§ 62.1-13.27. Administration; appeals; enforcement. — In administering the provisions of this chapter and in order to provide for appellate review and enforcement, the Commission, Commissioner or wetlands board as appropriate shall, as to the Coastal Primary Sand Dune Protection Act or an ordinance adopted pursuant thereto, bear all those duties and responsibilities and follow those procedures specified in §§ 62.1-13.7 through 62.1-13.19 of the Code of Virginia in the same manner and on the same basis as they administer and enforce the Wetlands Act or an ordinance adopted pursuant thereto. (1980, c. 660.)

§ 62.1-13.28. Exemptions. — Nothing in this chapter shall affect any project or development (i) for which a valid building permit or final site plan approval has been issued prior to July 1, 1980; or (ii) which, if no building permit is required for such project including a locally approved mining operation, has been otherwise commenced prior to July 1, 1980, and certified as exempt by the Commission or appropriate wetlands board; or (iii) approved by the governing body of any county or city pursuant to any local ordinance whose principal purpose is to review development in coastal primary sand dunes prior to July 1, 1980. Nothing in this section shall be deemed to exclude from regulation any activity which expands or enlarges upon a project already in existence or under construction. (1980, c. 660.)

Establishment of the State Water Control Board

§ 62.1-44.7. Board continued. — The State Water Control Board established in the Executive Department of the State, is continued. (Code 1950, § 62.1-19; 1968, c. 659; 1970, c. 638.)

§ 62.1-44.8. Number, appointment and terms of members. — The Board shall consist of seven members appointed by the Governor subject to confirmation by the General Assembly. Members appointed before July 1, 1970, shall continue in office for the terms for which appointed. Effective July 1, 1970, two members shall be appointed for a term of one year, and two members shall be appointed for a term of four years. Thereafter the successors of all members shall be appointed for the terms of four years each. Vacancies other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term. (Code 1950, § 62.1-20; 1968, c. 659; 1970, c. 638.)

§ 62.1-44.9. Qualifications of members. — Members of the Board shall be citizens of the State; shall be selected from the State at large for merit without regard to political affiliation; and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the work of the Board. No officer, employee or representative of any certificate-holder or of any industry, municipal corporation or county which may become a certificate-holder shall be appointed to the Board. (Code 1950, § 62.1-21; 1968, c. 659; 1970, c. 638.)

§ 62.1-44.10: Repealed by Acts 1980, c. 728.

Public Policy Regarding Sewage Discharge

§ 62.1-44.5. Public policy regarding waste discharges or other quality alterations of state waters. — It is hereby declared to be against public policy for any owner who does not have a certificate issued by the Board to (1) discharge into state waters inadequately treated sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or (2) otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

§ 62.1-44.6. Chapter supplementary to existing laws. — This chapter is intended to supplement existing laws and no part thereof shall be construed to repeal any existing laws specifically enacted for the protection of health or the protection of fish, shellfish and game of the State, except that the administration of any such laws pertaining to the pollution of state waters, as herein defined, shall be in accord with the purpose of this chapter and general policies adopted by the Board. (Code 1950, § 62.1-18; 1968, c. 659; 1970, c. 638.)

§ 62.1-44.11. Meetings. — The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request of any two members. All members shall be duly notified of the time and place of any regular or other meeting at least five days in advance of such meeting. (Code 1950, § 62.1-23; 1968, c. 659; 1970, c. 638:)

§ 62.1-44.12. Records of proceedings; special orders, standards, policies, rules and regulations. — The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Executive Director and open to public inspection. Any standards, policies, rules or regulations adopted by the Board to have general effect in part or all of the State shall be filed in accordance with the Virginia Register Act. The owner to whom any special order is issued under the provisions of § 62.1-44.15 shall be notified by certified mail sent to the last known address of such owner and the time limits specified shall be counted from the date of mailing.

§ 62.1-44.13. Inspections and investigations, etc. — The Board shall make such inspections, conduct such investigations and do such other things as are necessary to carry out the provisions of this chapter, within the limits of appropriation, funds, or personnel which are, or become, available from any source for this purpose.

§ 62.1-44.14. Chairman; executive director; employment of personnel. — The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.1-41.2. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter 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 § 62.1-44.15 (8) of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

§ 62.1-44.15. Powers and duties. — It shall be the duty of the Board and it shall have the authority:

(1) To exercise general supervision and control over the quality, management and distribution of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated thereunder.

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

(2a) To study and investigate methods, procedures, devices, appliances, and technologies which could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to assure that present and future water needs of the citizens of the Commonwealth are met.

(3) (a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established. The Board shall, from time to time, but at least once every three years, hold hearings as hereinafter provided for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling 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 canceled.

(b) Such standards and policies are to be adopted or modified, amended or canceled only after a hearing held after publication of a notice of the time, place and purpose thereof at least once in at least one newspaper of general circulation in the locality to which such standards and policies apply not less than thirty nor more than sixty days prior to the day on which the public hearing on the adoption, modification, amendment or cancellation of such standards and policies will be held. Such standards and policies or the modification, amendment or cancellation of such standards and policies will become effective thirty days after they are filed in accordance with the Virginia Register Act.

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

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

(8) (a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by § 62.1-44.3 (6), of state waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Board to comply with such directive, and (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Board.

(b) Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service as provided in § 62.1-44.12; provided that if the Board finds that any such owner is grossly affecting (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution immediately, and shall hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the Board finds that an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 62.1-44.23.

(c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

The amendments to this section adopted by the 1976 Session of the General Assembly shall not be construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to the effective date of said amendments.

(9) To make such rulings under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 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.

(10) 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, such regulations to be effective thirty days after they are filed in accordance with the Virginia Register Act.

Such regulations are to be adopted or modified or amended or canceled only after notice and hearing as provided with respect to standards and policies in § 62.1-44.15 (3).

(11) 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, and if no such settlement is reached within a reasonable time the Board shall authorize its executive secretary 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.

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

(c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though

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

(d) The proceeds of any recovery had 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.

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

(f) 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 State Department of Health to state waters in the course of processing or treating such waters for public water supply purposes, except where negligence is shown.

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

(13) To establish policies and programs for effective area-wide or basin-wide water quality control and management. The Board may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. 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 management and pollution control plan in the watershed or basin as a whole. 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. (Code 1950, § 62.1-27; 1968, c. 659; 1970, c. 638; 1972, c. 741; 1975, c. 335; 1976, c. 621; 1977, c. 32; 1978, c. 827.)

§ 62.1-44.15:1. Limitation on power to require construction of sewerage systems or sewage or other waste treatment works. — Nothing contained in this chapter 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, to construct any sewerage system, sewage treatment works, or water treatment plant waste treatment works or system 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 § 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 voluntarily agrees, or is directed by the Board with the concurrence of the Governor, to proceed with such construction, subject to reimbursement under § 8, or other applicable sections of such federal act.

The foregoing restriction 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.

Nothing contained in this chapter 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.

§ 62.1-44.15:2. 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. (1975, c. 339.)

Regulations By the State Water Control Board on Industrial Establishments

§ 62.1-44.16. Industrial wastes. — (1) 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.

Application 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.

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

(b) The Board shall review the application and the information that accompanies it as soon as practicable and making 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.

(2) (a) 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 owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

(b) The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under § 62.1-44.15 (8). (1970, c. 638.)

§ 62.1-44.17. Other wastes. — (1) Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-44.3 (9), any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the Board install facilities approved by the Board or adopt such measures approved by the Board as are necessary to prevent the escape, flow or discharge into any state waters when the escape, flow or discharge of such other wastes into any state waters would cause pollution of such state waters.

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

(3) The Board shall review the application and the information that accompanies it as soon as practicable and make a ruling 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.

Regulations By the State Water Control Board on Sewage Discharge

§ 62.1-44.18. Sewerage systems, etc., under joint supervision of Board and Department of Health. — (1) All sewerage systems and sewage treatment works shall be under the general supervision of the State Department of Health and the Board jointly.

(2) 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.

(3) It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any state waters to furnish, 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. (Code 1950, § 62-39; Code 1950 (Repl. Vol. 1968), § 62.1-31; 1968, c. 659; 1970, c. 638.)

§ 62.1-44.18:1. Survey of discharges into sewerage systems, etc. — Each owner who owns or operates a sewerage system or a sewerage or industrial waste treatment works shall conduct a survey by July 1, 1977, of the discharges of industrial wastes and other wastes into its sewerage system or treatment works in accordance with regulations promulgated by the Board. The purpose of such survey shall be to determine the physical, chemical, and biological properties, as appropriate, of each such discharge into the sewerage system or treatment works. The Board shall promulgate by July 1, 1976, a regulation which specifies the methodology for the conduct of the survey of industrial wastes and other wastes discharged into sewerage systems or treatment works and for the exemption of certain owners from the requirements of this section because of size or other appropriate factors as determined by the Board. Each owner shall furnish promptly to the Board a copy of the completed survey. Each owner that treats only its own wastes and is operating under a current certificate pursuant to § 62.1-44.16 of the Code of Virginia is exempt from the requirements of this section. (1976, c. 626.)

§ 62.1-44.18:2. When Board may prohibit discharge; permits. — A. Notwithstanding any other provision of this chapter, 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 usage of state waters as designated by the Board. Before making any such determination, the Board shall consult with and receive the advice of the State Department of Health.

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 requirement for notice and a hearing, the Board may, after consultation with the State Department of Health, 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 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 later 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. Nothing in this section shall limit the authority of the Board to proceed against such owner directly under §§ 62.1-44.23 or 62.1-44.32 after the Board has prohibited discharge, or after the Board has summarily amended or revoked the permit which authorized the discharge. If a proposed revocation or amendment of a permit is mutually agreeable to the Board and the owner, the hearing and notice thereof may be dispensed with. (1976, c. 626.)

§ 62.1-44.19. Approval of sewerage systems and sewage treatment works. — (1) 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 State Department of Health and the Board an application for a certificate in scope and detail satisfactory to the Department and the Board.

(2) 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 modifications or changes, if any, will be required for approval.

(3) 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 Board within two months a report in which the plans are approved or disapproved. If such plans are not approved, the report shall state what modifications, if any, or changes will be required for approval.

(4) 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.

(5) 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. If such 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) The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under § 62.1-44.15 (8).

(7) Nothing in this section shall limit the power of the Board and the Department in the control of sewerage systems or sewage treatment works serving less than 400 persons.

(8) Not later than September 1, 1976, the Board and the Department each shall promulgate regulations specifying procedures for processing applications and plans and specifying minimum treatment and design requirements for systems and works.

§ 62.1-44.108. Title. — This chapter shall be known and may be cited as the Flood Damage Reduction Act. (1977, c. 310.)

§ 62.1-44.109. Policy and purpose. — It is the policy of the Commonwealth and the purpose of this chapter to reduce flood damage through management of floodplain use by such means as floodplain zoning, and to insure that land uses in flood hazard or floodplain areas are appropriate. The responsibility and authority for zoning in the Commonwealth, including the adoption of floodplain zoning, rests with the local governing bodies as provided in Chapter 11 (§ 15.1-427 et seq.), Title 15.1 of the Code of Virginia. It is the intent and purpose of this chapter to guide development of the floodplains of the Commonwealth by providing state coordination and assistance to local political subdivisions in floodplain management, to encourage local governmental units to adopt, enforce and administer sound floodplain management ordinances, and to provide the authority necessary to carry out a floodplain management program for the State and to coordinate federal, state and local floodplain management activities in this State in such a manner that will enable all local governmental units subject to recurrent flooding to qualify for participation in the National Flood Insurance Program.

Further, it is the policy of the Commonwealth that all agencies and departments of the Commonwealth shall comply, when and wherever possible, with the floodplain regulations established pursuant to this chapter when planning for facilities in floodplains. (1977, c. 310.)

§ 62.1-44.110. Definitions. — As used in this chapter, unless the context requires otherwise:

A. *"Board"* means the State Water Control Board.

B. *"Emergency flood insurance program"* or *"Emergency program"* means the Emergency Program of the Federal Insurance Administration which provides subsidized flood insurance for potential flood victims, applicable to both new and existing structures, pending completion of applicable actuarial rates which is a prerequisite for eligibility to participate in the regular program.

C. *"Flood hazard area"* means a general term applied to all areas susceptible to flooding.

D. *"Floodplain"* or *"flood-prone areas"* means those areas adjoining a river, stream, watercourse, ocean, bay or lake which have been or hereafter are likely to be covered by floodwaters.

E. *"Floodplain management regulations"* means zoning ordinances, subdivision regulations, building code, health regulations, special purpose ordinances such as floodplain ordinances, grading ordinances or erosion control ordinances, and other duly promulgated rules, regulations and ordinances which may affect floodplain uses. The term describes such legally enforceable regulations, in any combination thereof, which provide standards for the control of the use and occupancy of flood-prone areas.

F. *"Hundred year flood"* means a flood of that level which on the average will have a one per centum chance of being equaled or exceeded in any given year at designated locations.

G. *"Local political subdivision"* means a county, city, or town.

H. *"National flood insurance program"* means the program established by the United States Congress under provisions of the National Flood Insurance Act of 1968, as amended, and as expanded in the Flood Disaster Protection Act of 1973, designed to provide flood insurance at rates made affordable through federal subsidy.

I. *"Regular flood insurance program"* means a program of insurance under the national flood insurance program, for which the Federal Insurance Administrator has issued a flood hazard boundary map and applicable actuarial rates, and under which new construction will not be eligible for flood insurance except at the applicable actuarial rates. (1977, c. 310.)

§ 62.1-44.111. Administration and enforcement of chapter. — The Board shall have the authority to administer the provisions of this chapter in coordination with the administration of the Virginia Erosion and Sediment Control Law, Article 6.1 (§ 21-89.1 et seq.) of Chapter 1 of Title 21 of the Code of Virginia. The Board shall coordinate and cooperate with local political subdivisions in rendering assistance to such political subdivisions in their efforts to comply with the provisions of Planning, Subdivision of Land and Zoning, Chapter 11 (§ 15.1-427 et seq.), Title 15.1 of the Code of Virginia. The Board shall cooperate with other public and private agencies having floodplain management programs, and shall coordinate its responsibilities under this chapter and any other law. The Board shall coordinate the development, dissemination and use of information on floods and flood hazards. (1977, c. 310.)

§ 62.1-44.112. Powers and duties of State Water Control Board. — It shall be the duty of the Board and it shall have the authority:

A. To collect and distribute information relating to flooding and floodplain management.

B. To coordinate local, state and federal floodplain management activities to the greatest extant practicable, and to encourage the United States Army Corps of Engineers, the United States Soil Conservation Service, the United States Geological Survey, the Tennessee Valley Authority, and the United States Department of Housing and Urban Development to make available flood and flood damage reduction data to local political subdivisions for planning purposes, in order to assure necessary local participation in the planning process and in the selection of desirable alternatives which will fulfill the intent of the policy and purpose of this chapter.

C. To assist local political subdivisions in their management of floodplain activities in cooperation with the Department of Housing and Community Development.

D. To carry out the provisions of this chapter in a manner which will insure that the management of floodplains will preserve the capacity of the floodplain to carry and discharge a hundred year flood.

E. To make, in cooperation with local political subdivisions, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances, rules and regulations.

F. To coordinate with the United States Department of Housing and Urban Development to insure current knowledge of the identification of flood-prone communities and of the status of applications made by local governments to participate in the National Flood Insurance Program.

G. To establish guidelines which will meet minimum requirements of the National Flood Insurance Program in furtherance of the policy of the Commonwealth to assure that all citizens living in flood-prone areas may have the opportunity to indemnify themselves from flood losses through the purchase of flood insurance under the regular flood insurance program of the National Flood Insurance Act of 1968. In the development of these guidelines, the Board shall request the assistance and advice of the Virginia Soil and Water Conservation Commission.

APPENDIX III-3

Subaqueous Guidelines: Guidelines for the Permitting of Activities Which Encroach in, on or over the Subaqueous Lands of the Commonwealth of Virginia

VIRGINIA MARINE RESOURCES COMMISSION

SUBAQUEOUS GUIDELINES

A. INTRODUCTION

1. Purpose

a. The purpose of this statement is to confirm, establish and standardize the policies and procedures of the Marine Resources Commission for the permitting of activities directly affecting the subaqueous land of the Commonwealth of Virginia. This statement will be used to guide the Commission and it's staff in the performance of their duties and serve to inform the general public of the usual terms and conditions under which subaqueous activities will be permitted in State waters. Nothing in this statement, however, restricts or impedes the power of the Commission to review each application on its individual merits, apply only those conditions considered appropriate or to consider unusual or mitigating circumstances in the review of applications.

b. The policies contained in this statement are designed to protect the rights of all citizens of Virginia to appropriate uses of State-owned bottoms, to safeguard marine fisheries by minimizing impacts on aquatic habitat, to promote public safety and to accomodate the economic needs of the Commonwealth.

2. Authority Required for Use of Subaqueous Beds

Section 62.1-3 of the Virginia Code states that it shall be unlawful and constitute a misdemeanor for anyone to build, dump, or otherwise trespass upon or over or encroach upon or take or use any materials from the beds of the bays and ocean, rivers, streams, creeks, which are the property of the Commonwealth, unless such act is pursuant to statutory authority or a permit by the Marine Resources Commission.

3. General Considerations Applying to All Permits

a. The submerged lands in the state are a public resource therefore permitted encroachment thereon will strive to minimize interference with the rights of all citizens of the Commonwealth to other appropriate uses of that resource.

b. In granting or denying any permit for the use of State-owned bottom lands, the Commission will consider, among other thnigs, the effect of the proposed project upon: other reasonable and permissible uses of State waters and State-owned bottom lands; marine and fisheries resources, wetlands, adjacent or nearby properties; anticipated public and private benefits; and water quality standards established by the State Water Control Board. The Commission will also consider the water-dependency of the project and alternatives for reducing any anticipated adverse impacts.

c. For projects costing in excess of $10,000, the permit issued by the Marine Resources Commission must be approved at one of the monthly Commission meetings. The Commission normally meets on the fourth Tuesday of each month. The applicant is informed ten days prior to the meeting at which his application will be considered. Projects less than $10,000 and unprotested by any individual or agency may be approved by the Commissioner of the Marine Resources Commission.

d. Property owners listed by the applicant as adjacent to the project location will be notified of the permit application and provided a copy of the application drawings. Comments received from adjacent property owners are given consideration in the permit review process.

e. It is Commission policy that notice of a proposed project be published in a newspaper having general circulation in the area of the project. While the Commission will prepare and forward the appropriate notice to the newspaper, the expense of the public notice is borne by the project applicant.

f. All permits shall contain an expiration date for authorized construction and dredging. All general and special conditions contained in the permit remain in effect for the life of the project. The Commission has established procedures for notifying permit holders of permit expiration dates. Permits cannot be modified, extended or transferred without the written permission of the Commission. The Commissioner has been delegated authority to grant extensions of up to two years upon written request of the permittee. Minor modifications may also be approved by the Commissioner.

g. A permit applicant must complete a single joint permit application which is available from local, state and federal permitting agencies.

h. It is the permit applicant's responsibility to determine if the project will be located within another individual's water rights and/or oyster grounds. Written permission from the holder of such rights to encroach thereon is helpful, nevertheless, all permits issued contain a clause that the permit is conditioned upon any existing leases. Oyster maps may be examined at the VMRC Engineering Division or at local court houses.

i. Copies of the completed application are sent to other state agencies for review and comments. These agencies include the Virginia Institute of Marine Science, the Bureaus of Wastewater Engineering and Shellfish Sanitation of the Department of Health, and the State Water Control Board. A field inspection is normally made by the Commission environmental engineer responsible for that geographic area. Upon receipt of comments by State agencies, adjacent property owners and other interested parties, the application is acted upon by the Commission at its regular monthly meeting or

by the Commissioner if under $10,000 in cost and unprotested by any agency or individual.

j. The expiration date for construction is normally two years from the date of issue. Certain maintenance dredging permits may be granted for five years provided the permittee notifies the commission forty-five days before commencement of each maintenance dredging during that five year period.

k. The permit must be signed by the individual listed as permittee. In cases where the Permittee is a corporation, company or political jurisdiction, the individual signing the permit for that body must provide a certificate showing proper authorization to bind that corporate entity to the financial and performance obligations which could result from the activity authorized by the permit.

l. A permit may be revoked at any time by the Commission upon failure of the permittee to comply with any of the terms and conditions or at the will of the General Assembly of Virginia.

m. The permit does not confer upon the permittee any interest or title to submerged land.

n. Any person, firm, or corporation constructing or erecting any structure upon or over State-owned bottoms shall be responsible for the maintenance or removal of such structure upon its abandonment or its falling into a state of disrepair.

o. If the nature of the proposed work is such that it could create a safety hazard or endanger adjoining property, a performance bond or surety bond satisfactory to the Commonwealth may be required to guarantee the faithful performance of the proposed work.

Permit Fees and Royalties

Some fees are defined by statute, others are within the discretion of the Commission. All fees are subject to change. Fees are due and payable only after the proposed project is approved. Current permit fees are as follows:

Projects $10,000 or less	$ 25.00 application fee
Projects more than $10,000	$100.00 application fee

Royalties	
New dredging	$ 0.10 – $0.30 per cubic yard
Submerged/overhead crossing	$ 1.00 per linear foot
Filling	Based on appraisal or negotiated

Borrow material – generally assessed near the $0.30 maximum per cubic yard.

Projects completed without a permit are illegal and may be subject to prosecution. Where it appears that the project for which an application is made has been completed or work therein already begun at the time application is made, additional fees and royalties up to an amount treble the normal fees and royalties may be assessed in lieu of prosecution.

In the event an applicant is denied a federal permit to undertake activity for which he has paid a royalty, the royalty may be refunded upon proper application by the permittee. Permit issuing fees may not be refunded.

B. Dredging Operations

1. Dredging depths should be determined by the proposed use and controlling water depths outside the area to be dredged.
2. Overdredging to reduce the frequency of maintenance dredging should not exceed an additional two feet and this should be based on the expected rate of sedimentation at the dredge site.
3. Generally side slope cuts of a dredging area should not exceed a two horizontal to one vertical slope to prevent slumping of material into the dredged area.
4. In order to lessen the possibility of dredging having adverse effects on commercially or recreationally important fisheries, certain seasonal dredging limitation may be imposed on a site specific basis depending on sediment type, proximity to shellfish areas or spawning grounds, dredging method, the project's size, location and measures taken to reduce turbidity. In important spawning and nursery areas in fresh and near fresh waters, dredging may be restricted to the months of November through mid-March. For brackish and saline waters where significant quantities of oysters and clams are present the better months for dredging are mid-March through June and in October and November. Where commercial dredging for crabs in deeper waters is an important consideration, the better months for dredging are from April through November. These limitations will be judiciously applied in order to prevent undue economic burdens on the Permittee or his contractor.
5. Dredging for proposed small craft channels should be no more than one foot deeper than adjacent natural water bodies and only as wide as necessary to safely navigate in order to avoid creating water circulation and flushing problems. Dredging to depths deeper than the nearest channel can create stagnant conditions which can lead to decreased oxygen levels, unpleasant odors and degredation of local marine resources.
6. Only under special or unusual circumstances should dredged material be double handled. This practice involves the placement of dredged material at another location in the waterway from which it was dredged only to be redredged for proper disposal.
7. Dredging in shellfish areas, both public and private, beds of submerged aquatic vegetation and other highly productive areas is discouraged.

C. Filling and Dredged Material Placement

1. Filling on State-owned subaqueous land for the creation of highland property is generally not permitted. If special circumstances warrant such fill an appropriate royalty will be assessed on a square foot basis.
   a. Clean material from an upland source is generally preferrable to dredged material for use as fill.
2. Filling on wetlands to create upland property is generally not permitted unless unusual conditions warrant. Decisions by a local wetlands board or the Commission will be based on the Wetlands Guidelines which categorize wetlands species according to type and relative importance.
3. Dredged material must be placed in a disposal area which is acceptable to the Commission. Factors to be considered in approving a disposal site are:
   a. Encroachment on natural drainage ways.
   b. Chemical nature of the dredged material and its potential for polluting adjacent or nearby underground water supplies.
   c. Encroachment over underground utilities, i.e., water lines and sewer facilities.
   d. Value of the site to the natural environment.
   e. Proximity to populated areas.
   f. Anticipated use of the material or disposal site after dredged material is placed and consolidated.
4. The disposal area should be properly prepared to receive the fill before the start of dredging or filling.
5. Overboard disposal of dredged material into tidal waters is usually not permitted unless the material is uncontaminated and granular (sand size). Quality dredged material may be used for beach replenishment at various public beaches in Virginia where natural sources of sand supply are inadequate.
   a. When authorized overboard disposal areas will be located to minimize impacts on commercially important bottom dwelling organisms such as oysters and clams, submerged aquatic vegetation, wetlands and other shallow productive habitats.
   b. Overboard disposal areas should be properly shaped and positioned to reduce scour and sedimentation.

D. Structures

1. Piers and Wharfs
   a. The placement of open-pile private piers for non-commercial purposes by owners of the riparian lands in the riparian waters opposite such lands does not require a permit from the Commission, however, a drawing of the proposed pier is required in order to determine that such piers will not interfere with navigation.
   b. Piers for commercial purposes do require a permit from the Commission. A structure is considered commercial or industrial in nature if it is in support of operations that charge for the production, distribution, or sale of goods or services. For example, dock facilities associated with condominium type dwellings are considered commercial because they increase the value of units offered for sale.
   c. Construction material and designs being used should ensure stability and safety.
   d. Utilization of open pile type structures for gaining access to navigable water is strongly favored over construction of solid fill structures.
   e. Piers constructed over vegetated wetlands should be high enough to clear the top of existing vegetation.
2. Marinas
   a. The appropriate siting of marinas is a complex process that requires careful review of numerous factors.
   b. Marinas provide a public service (benefit) through increased public access but can result in a net public detriment (loss) in certain locations through degradation of living resources.
   c. The numbers of water borne craft which may be drawn to the waterway, and existing congestion and carrying capacity of the water body must be considered.
   d. Adequate riparian waters which can accomodate all aspects of the project is essential, i.e., vessel movement in and out of the facility should not infringe on the riparian waters of adjacent properties.
   e. The structure should encroach no more than one third the distance across the waterway except in unusual channel configurations.
   f. Development along concave shorelines can create serious congestion problems and infringement on the riparian rights of adjacent property owners is more likely to occur.
   g. Convex shoreline areas are generally better suited to marina activity where a marginal wharf with perpendicular finger piers can be utilized to reduce encroachment into the waterway.
   h. Locations near the mouth of a waterway provide better flushing characteristics for marina activity than is provided further upstream.
   i. Approval of a plan for onshore sanitary and pumpout facilities by the State Department of Health is required prior to issuance of a Commission permit. Because of the cost of design plans, the Commission may approve a marina or boatyard application but issuance of the permit will be withheld until receipt of Health Department approval.
   j. Dry storage type facilities are encouraged because of their greatly

reduced encroachment into the waterway and greater pollution controls.

k. The condemnation of shellfish areas as a result of marina location is a serious consideration in the permitting process and should be avoided if at all possible. The Bureau of Shellfish Sanitation advises the Commission as to shellfish condemnations which may occur.

l. In presently condemned shellfish areas measures to insure no further degradation of water quality may be required.

m. In order to reduce the amount of dredging required for a marina, slips for boats of deep draft should be built in the naturally deeper waters of the marina.

n. Proper water circulation and tidal exchange should be maintained by avoiding end dead canals and restricted inlets.

3. Bulkheads

a. Where soil conditions are suitable sloped stone or rubble riprap with a filter cloth barrier between the highland and the riprap is normally preferable to a vertical bulkhead.

b. Where vertical bulkheads are necessary, chemically treated tongue and groove material with equally spaced deadmen, galvanized tie backs and treated or concrete piles is recommended.

c. Railroad tie bulkheads are normally discouraged.

d. Bulkheads should normally have return walls or be tied onto adjacent bulkheads.

e. Bulkheads should be placed behind existing wetlands. Where no wetlands exist, bulkheads should be placed as far landward as possible to minimize impact on the marine environment.

f. Areas of highly unstable shorelines and/or areas having high levels of reflected wave energy will normally require construction materials which absorb and dissipate wave energy such as riprap, gabions, or vertical bulkheading with protective riprap at the toe.

4. Jetties, Groins and Breakwaters

a. Jetties, groins and breakwaters should be designed in such a manner that their locations will not create adverse sediment transport patterns or unduly disturb marine resources.

b. Jetties, groins and breakwaters should be designed in such a manner that they will not be breached by tides and/or fail under wind, current or tide conditions normally experienced at the site.

c. Professional advice on the suitability of jetties, goins and breakwaters is recommended since their effectiveness at a specific site is difficult to predict.

d. The anticipated effect of a proposed groin-field upon adjacent properties is an extremely important consideration in evaluating a permit application.

E. OVERHEAD AND SUBMARINE CROSSINGS

1. Overhead and/or submarine crossings are normally permitted if reasonable measures are taken to protect aquatic resources.
2. Aesthetic considerations may be an important factor in overhead crossings particularly to residents in the local area.
3. Overhead structures must be designed in such a manner that they will impede normal waterborne traffic.
4. Where practical, overhead structures should be designed in such a manner that supports will not be constructed in the normal watercourse.
5. Where practical, overhead crossings should be located at or near existing crossings.
6. Submarine crossings should be designed such that a minimum of three feet of cover will be provided over the upper extremity of the submerged structure in order not to interfere with fishing devices normally employed in the area.
7. Alteration of submerged aquatic vegetaion, shellfish beds and wetlands should be carefully considered in the planning and location of submerged structures.
8. Backfill material for submarine crossings should restore as closely as possible the depth of the original bottom.

F. PRIVATE RIPARIAN AND NON-RIPARIAN MOORINGS

1. General Conditions

a. Mooring buoys should not be located:
   1) On Private shellfish leases or designated public shellfish grounds.
   2) In submerged cable-crossing areas.
   3) In or near designated navigational channels.
   4) Within 200 feet of a public or commercial bathing beach.
   5) So as to [illegible]ere with the operation of or access through any bridge
   6) So as to infringe on the riparian rights of adjacent properties;

b. Moorings should be marked and maintained in accordance with the "Unified State Waterway Marking System" (USWMS) as approved by the U.S. Coast Guard which require buoys to be white with a blue stripe around the middle.

c. All permits granted by the Commission will contain a stipulation that "The Permittee agrees to remove said structure from State-owned subaqueous bottom within ninety (90) days after written notification by the Commissioner."

2. Riparian Moorings

a. The Commission will normally grant a permit request by a riparian owner for a single mooring to be placed in accordance with the

general conditions above and is to be located within his riparian waters.

3. Non-Riparian Moorings

a. The Commission will normally grant a permit requested by an individual who does not own waterfront property for a single mooring buoy if:

1) The mooring is placed in accordance with the general conditions in paragraph 1 above, and

2) it can be demonstrated that there is access to the mooring without trespassing on private riparian property. No mooring will normally be permitted which substantially hinders water access to a riparian property unless a letter of no objection is obtained by the applicant from the adjacent property owner(s), or

3) approval is obtained from the riparian owner of water rights within which the buoy is to be placed.

b. The commission may consider a permit request for a group (multiple) mooring under unusual circumstances.

4. Designation of Mooring Areas, Mooring Restrictions

a. Any local government or state or federal agency may recommend to the Commission that the placement of moorings in the waters that fall within their jurisdiction be restricted in certain areas or that certain areas be designated as mooring areas in order to protect public safety, welfare, and recreational and commercial interests.

APPENDIX III-4

Wetlands Guidelines

WETLANDS GUIDELINES

Prepared by

The Department of Wetlands Ecology
Virginia Institute of Marine Science
College of William and Mary

and

The Environmental Affairs Division
Virginia Marine Resources Commission

Developed pursuant to Chapter 2.1 of
Title 62.1 Code of Virginia

CRITERIA FOR EVALUATING ALTERATIONS OF WETLANDS

The legislature established a policy "to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation". This section addresses the foregoing policy. Many proposed uses of the shoreline can be accommodated with little or no loss of wetlands if the following criteria are applied. There are times, of course, when these criteria may not apply in specific cases. The conscientious application of these criteria will, however, materially reduce adverse environmental impacts of man's activities on the shoreline.

The individual criteria contained in this section are supported by brief statements explaining the basic reasons behind adoption of the particular criterion. It is emphasized that these rationale are of necessity very brief and do not encompass all aspects of the given subject. Persons desiring further details should contact either the Virginia Marine Resources Commission, Environmental Division or the Virginia Institute of Marine Science, Department of Wetlands Ecology.

General Criteria

A. Provided significant marine fisheries, wetlands and wildlife resources are not unreasonably detrimentally affected, alteration of the shoreline or construction of shoreline facilities may be justified in order to:

1. Gain access to navigable waters by:

   a. Commercial, industrial, and recreational interests for which it has been clearly demonstrated that waterfront facilities are required.

   b. Owners of land adjacent to waters of navigable depth or waters which can be made navigable with only minimal adverse impact on the environment.

2. Protect property from significant damage or loss due to erosion or other natural causes.

B. Alteration of the shoreline is ordinarily <u>not</u> justified:

1. For purposes or activities which can be conducted on existing fastlands and which have no inherent requirement for access to water resources.

2. For purposes of creating waterfront property from lots and subdivisions which are not naturally contiguous to waters of navigable depth or waters which can only be made navigable by substantial alteration or destruction of marine resources.

3. When damage to properties owned by others is a likely result of the proposed activity.

4. When the alteration will result in discharge of effluents which impair wetlands, water quality or other marine resources.

5. When there are viable alternatives which can achieve the given purpose without adversely affecting marshes, oyster grounds or other natural resources.

Rationale: These criteria recognize riparian rights and reserve the shoreline for those uses or activities which require water access. These criteria also point out that activities such as dredging into the fastlands for housing developments often have a significant and long term adverse impact on the marine environment through such effects as changed upland hydrology, sedimentation, changes in water current patterns near the shoreline, and the introduction of pollutant discharges which frequently lead to closure of shellfish grounds. The dredging of channels into fastlands may also lead to deterioration of ground water by salt water intrusion into aquifers.

C. Utilization of open-pile type structures for gaining access to adequate water depths is generally preferred over the construction of solid structure, dredging or filling.

Rationale: The construction of solid structures, or the conduct of dredging and filling operations, often causes irretrievable loss of wetlands through their direct displacement or by indirect effects of sedimentation or altered water currents. Open-pile type structures permit continued tidal flow over existing wetlands and subtidal areas, avoid potential sedimentation problems, future maintenance dredging, and have less effect on existing water current patterns.

D. Channels, fills and structures should be designed to withstand the maximum stresses of the marine environment and also to minimize the frequency of future maintenance activities.

Rationale: Shoreline alterations often change currents, affect shoreline stability and cause biological damage. Unsuccessful structures or channels generate demands for remedial action which can compound initial adverse effects. Designs which minimize the dredging frequency in channels are particularly important. Dredging destroys or displaces bottom-dwelling organisms of value to the aquatic food web. Organisms can be expected to recolonize a dredged area after a period of time, however, too frequent dredging can inhibit recolonization.

E. High density development in or immediately adjacent to wetlands and/or other flood plains is discouraged.

Rationale: Development in low-lying areas and on high energy coastlines has historically created costly flood control and flood relief problems including claims for indemnification. Additionally, hydrological changes in surface run-off patterns are caused by the paving over of formerly absorbent soil. The usual effect is an increase in both the amount and the rate of surface water flow, often contributing to shoreline erosion and other problems. Finally, high-density development leads to a concentration of contaminating constituents in urban surface water runoff which can severely stress receiving waters in the adjacent marine environment. There appears to be a direct relationship between population density in a watershed and increased bacterial levels in adjacent waters. This may lead to the imposition of long term restrictions on the direct marketing of shellfish.

SPECIFIC CRITERIA

The following specific criteria are established for use in the design, evaluation or modification of individual projects.

A. Shoreline Protection Strategies

1. Shoreline protection structures are justified only if there is active, detrimental shoreline erosion which cannot be otherwise controlled; if there is rapid sedimentation adversely affecting marine life or impairing navigation which cannot be corrected by upland modifications; or if there is a clear and definite need to accrete beaches.

Rationale: The design and placement of shoreline protection structures is a highly technical subject and often the precise or long-term effects of such structures on littoral processes cannot be predicted. A study of one county's shoreline shows that nearly 50% of the existing shoreline protection systems are ineffective or poor in performance. Shoreline protection structures disrupt natural forces and drive a shoreline away from a natural equilibrium state. In short, all protective structures have the potential to adversely affect marine resources directly or through indirect means. Needless shoreline modification is therefore discouraged.

2. For shorelines experiencing mild to moderate erosion, the planting of marsh grasses is a preferred means of stabilization. Note: The planting of marsh grasses is not appropriate on all shorelines and requires some technical expertise. Free advice is available from the Virginia Shoreline Erosion Advisory Service and the Virginia Institute of Marine Science.

Rationale: Fringing marshes buffer erosion through their dense root systems and ability to collect sand and sediments moving along the shoreline. When a fringe marsh is established, it not only provides food and habitat for marine birds and other organisms but also minimizes the adverse effects to adjacent shoreline properties which are often associated with other types of erosion control measures..

3. When an erosion control structure, such as a bulkhead or seawall, is deemed necessary, it should ordinarily be placed landward of any existing and productive marsh vegetation. A line of saltbushes, if existing, can usually indicate the seaward limit of the vertical structure. Along

shorelines where no marsh vegetation exists, the retaining structure should ordinarily be placed far enough landward of mean high water so as to minimize exposure to wave action.

Rationale: A vertical retaining structure behind a marsh not only preserves the marsh for its biological productivity but also utilizes the marsh's capabilities of aiding water quality and deterring erosion. Placing a vertical retaining structure landward of mean high water minimizes its exposure to wave action and reduces erosion or scour along the toe which could jeopardize the integrity of the structure. Landward placement also preserves intertidal bottom, maintaining habitat diversity and associated functions of this area within the marine ecosystem.

4. Sloped rock or riprap revetments and gabions are generally preferred over vertical structures.

Rationale: Vertical retaining structures tend to reflect wave energy and often transfer a problem to neighboring properties. Coastal waves, whether from natural causes or from boat wakes, are better absorbed or dissipated by riprap revetments or gabions. In addition, the slope and open spaces in riprap or gabion structures may provide suitable habitats for crabs and small fish. In some cases, sediment may be trapped in riprap or gabion structures and subsequently become vegetated with marsh species.

5. The placement of offshore breakwaters or submerged nearshore sills parallel to a portion of shoreline in order to attempt to elevate the height of a beach or dampen wave energy is generally acceptable only in areas with a good sand supply in the nearshore zone or where there is active detrimental erosion. Sill structures are usually constructed of properly filled sandbags, gabions or mortar filled bags. Although not a general rule, the sill is usually most effective when placed at or near the mean low water line. Both breakwaters and sills must be specifically designed for the shoreline segment in question.

Rationale: The placement of sill structures where there is an insufficient supply of sand to the beach may cause harmful effects to the shorelines of adjacent downdrift properties. Placing the sills at, or near the mean low water line will usually ensure sufficient backshore height. Placement of the sill structure too far offshore may result in insufficient filling and ultimately failure of the system. Sills may also not be suitable for high use beaches because of the potential hazard to swimmers.

6. The placement of a groin or series of groins on eroding shorelines in an effort to trap sand and build up a beach is justified only when there is sufficient sand in the littoral drift system or if properly functioning groins already exist in the section of shoreline in question.

Rationale: Groins are designed to trap sand and build beaches. When they function properly, they necessarily deprive downdrift shorelines of sand and thus may accelerate erosion of adjacent properties particularly if there is only a small amount of sand available in the system.

7. When groins are considered justified they should be low profile in design and only as long as is necessary to trap sand drifting in the littoral zone. Ideal groin length can be determined by examining the sand fillets in existing groins along the same shoreline reach or can be based on the width of the local beach.

Rationale: The low profile groin is designed to resemble the natural beach elevation and allow sand to by-pass and thus nourish downstream properties once the groin cell has filled. Groins which are too long for an existing beach may inhibit the alongshore transport of sand to downdrift properties.

8. The use of jetties at the entrance of a channel in order to maintain navigable depths or protect the entrance from wave attack is justified only when there is a clear and demonstrated need for such a structure and adjacent properties will not be significantly adversely affected.

Rationale: Jetties attempt to prevent the littoral drift from entering the channel by trapping sediment moving along the shoreline. Sand tends to accumulate on the updrift side of a jetty and sediments are transported away from the jetty on the downdrift side. This can often result in accelerated erosion of the downdrift shoreline.

B. Filling and Dredged Material Disposal.

1. Filling in wetlands or subaqueous areas for the singular purpose of creating waterfront upland property is generally unacceptable.

Rationale: Marine resources are finite, provide many valuable services and products and are delicately balanced in an intricate web of biological and physical interactions. Permanent loss of these resources and unnecessary alterations jeopardize this delicate ecological balance.

2. When filling along a shoreline is necessary, the activity should be confined to the area landward of any wetlands. If suitable non-wetland areas are not available and it is necessary to locate the fill further seaward, locations in Group 3-5 wetlands should be selected if possible (reed grass, saltwort, saltbush, black needlerush, yellow pond lily). Every reasonable effort should be made to preserve existing Group 1 and 2 wetlands communities. In nonvegetated wetlands, fill should be contained at or above the mean high water line. In cases where some encroachment beyond mean high water is justified (e.g. where an eroding bluff is being graded down to stop erosion), the encroachment channelward of mean high water should be limited to the minimum required to achieve the desired grade.

Rationale: The values of the more important wetland communities are preserved, thus somewhat lessening the undesirable impact of destroying marshes and in the case of nonvegetated areas, minimizing encroachment conserves these shallow areas to function as described in Section II of this document.

3. Fill material, whether on wetlands or nearby fastlands, should not contain contaminants which may leach into adjacent waters. Upland source material is generally preferable to dredged material for use as fill.

Rationale: Oil or other contaminants can leach off the surface of filled areas and travel to adjacent waters via surface runoff. In some instances, they may also leach downward into the water table. In either case, water quality is impaired. Most dredged material is composed of silts and clays which when dry and compacted do not allow the free flow of water and thus may cause hydraulic flow problems behind a bulkhead.

4. Where feasible, controlled disposal of dredged material on highland property is the preferred method.

Rationale: There are many difficulties inherent in controlling dredged material in the marine environment. Marine resources are finite and subject to significant disruption from such activities since the water column can act as a vector carrying sediments well beyond the immediate disposal point.

5. Dredged material disposal areas should meet the following criteria:

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a. Disposal by the bucket or dragline method:

1. Build an earth-tight bulkhead along the perimeter of the disposal area sufficient to confine the dredge material. The bulkhead or dike (berm) should have a top elevation at least 1 meter (3.2 feet) above the average upper limit of spring tides.
2. Earthen dikes (berms) should be compacted as they are constructed, have side slopes no steeper than 1 horizontal to 3 vertical, a top width of at least 1 meter (3.2 feet), and the toe of the slope should be at least 4.5 meters (15 feet) from existing marsh grasses. Spillway boxes or release pipes should be provided to prevent water from eroding or over-topping the dike. As soon as possible after completion of the project, the disposal area should be graded and vegetative cover established.
3. In some projects involving small volumes of generally sandy material, a double line of staked straw bales may provide a suitable containment.

b. Disposal by hydraulic methods:

1. Earthen dikes should be constructed by dragline or land fill methods to the specifications as described in 5 a.2 above. The volume of the disposal area lying below the elevation of the spillway crest should, at all times during the dredging, be sufficient to provide a retention time long enough to clarify the discharge water to meet applicable water quality standards. The spillway should be placed as far as possible from the discharge end of dredging pipes.
2. The dredge pipeline should have tight joints to prevent leaks. Grading and vegetative cover should be accomplished as soon as possible. (It is recognized that hydraulically filled areas may take many months to dry sufficiently for people or equipment to move across them. Seeding may have to be delayed for periods possibly as long as a year. The spillway should therefore be maintained until the area is permanently seeded and vegetation is well established and providing adequate ground cover to retain the soil).

Rationale: Control of sedimentation is accomplished if the above criteria is maintained during the entire dredging period.

6. Dredged material should not ordinarily be deposited in adjacent marsh as a convenience. If it becomes necessary to place dredge material on a marsh, consideration should be given to placing it on those portions of lower value or to scattering the material in a thin layer rather than containing it behind a berm. Berms in marshes should be used to contain fill only when absolutely necessary and when they will not impair tidal flow to other wetlands areas.

Rationale: A continuous berm often cuts off water supply to a marsh. Selective piling of material allows continued water supply to uncovered portions of a marsh and may enhance habitat for wildfowl and animals. Scattering of dredged material in a thin layer can sometimes maintain basic marsh values though it may ultimately lead to changes in vegetative species if the marsh surface is significantly raised in elevation. The depth of the soil layer must be evaluated in each case.

7. Whenever feasible, displaced marsh vegetation and peat should be used to reconstitute marsh in the vicinity of the activity site and particularly along the banks of newly cut canals. The practice of compensating for marsh loss in one area by building marsh in another is theoretically viable but because of significant technical difficulties is not always recommended.

Rationale: This procedure, when successful, aids in maintaining marsh inventory and will deter shoreline erosion and enhance water quality conditions.

8. When under specific case by case analysis it is determined that marsh creation is an acceptable means of compensating for an unavoidable marsh loss, one marine habitat (e.g. tidal flats) should ordinarily not be sacrificed to create another (marsh). Resource compensation through marsh creation is not a panacea and should be limited to cases where the loss of existing marsh is unavoidable or insignificant and there is a high probability of success.

Rationale: There is at present no conclusive evidence that the trading of one marine habitat for another results in a net gain for the environment. The creation of marsh from upland or other habitat is technically feasible in many cases. It is, however, a complex activity that generally cannot be successfully accomplished without technical knowledge and expertise.

9. Overboard disposal of dredged material is generally undesirable unless the deposits are basically clean sand, the disposal area is devoid of commercially important bottom organisms, and the deposits will have a beneficial effect on shoreline erosion problems. There may be occasions when overboard disposal of silty dredge material can be used to create marsh. This will probably also entail the planting or seeding of marsh vegetation under closely controlled conditions.

Rationale: Silty soils tend to stay in the water column longer than the heavier sands and may therefore drift to other areas resulting in damage to bottom organisms outside the selected dredge disposal area. Pollutants may likewise drift with the currents. In some cases, good quality sand can be beneficial in nourishing starved or eroding beaches and this possibility should be considered.

10. Whenever overboard disposal is permitted, the operation should be located and conducted so as to minimize impacts on commercially important bottom dwelling (benthic) organisms such as clams and oysters, submerged aquatic vegetation, and other unique or highly productive habitats.

Rationale: Because water is the link which ties all different marine habitats together and can transport pollutants over large areas, care must be taken to localize the impacts of overboard disposal to the maximum extent practical.

11. The overboard disposal of good quality sand in order to replenish beaches is generally acceptable so long as the beach sand and dredged sand are size-compatible.

Rationale: The placement of material of smaller particle size than that found on the natural beach will only serve to increase turbidity since it will be resuspended by wave action and carried away very quickly resulting in little benefit for the sand-starved beach.

C. Dredging

1. When possible, open pile piers should be lengthened to reach necessary water depths in order to minimize the amount of dredging required.

Rationale: Open pile piers have a minimal adverse impact on the marine environment. Dredging is a significant, though temporary, disruption which must be repeated in order to maintain water depths. Every dredging project, whether new dredging or maintenance requires an approved disposal area and this can be a major problem particularly in developed areas.

2. Dredging for the singular purpose of obtaining fill is ordinarily not justifed.

Rationale: Although dredged areas are repopulated to a degree by organisms after cessation of dredging, they generally never return to their pre-dredge productivity levels if water depths are greatly increased. The result is a chronic degradation of habitat quality and reduction in system productivity.

3. For relatively small projects (1500 m^3 (2000 yd^3) or less), dredging by dragline or bucket method is generally preferred.

Rationale: Control of sedimentation is much simpler with the bucket dredge in that there is a higher ratio of soil to water as the dredged material is transferred from the dredging area. Dredged material disposal is less complicated and more easily subject to productive use. Hydraulic dredging is preferred for large dredging projects particularly when the dredged material is to be placed in an area remote from the dredged site.

4. The practice of "double handling" dredged material in a waterway is generally undesirable.

Rationale: This activity, which involves the interim placement of dredged material in the waterway effectively doubles the adverse effects of bottom disruption and turbidity associated with dredging activities.

5. Dredging in shellfish areas, beds of subaquatic vegetation and other areas of singularly high productivity should be avoided.

Rationale: These areas generally have very high values to both commercial and sport fisheries and to the organisms that support them. In addition their recovery period from dredging is measured in years rather than months as is the case for other bottom types. In many cases the new depth involved after dredging may preclude any recovery of these particular biotic communities.

6. In oyster and clam growing areas (brackish and saline water) dredging should be avoided during the months of July, August, September, December, January and February, whenever possible. This is particularly important when the dredging is to be performed within 500 yards of, or overboard disposal is within one mile of, productive public or privately leased oyster ground. In anadromous fish spawning and nursery areas (i.e. freshwater), dredging and overboard disposal operations should be avoided, when possible, during the period of mid-March through October. Particularly critical is the actual spawning period, mid-March through June. Concern is heightened when overboard disposal is involved.

Rationale: The majority of oyster spawning and spatfall occurs during the months of July, August and September in most areas of Virginia. Higher than normal suspended solids levels, which can occur in proximity to large dredging and disposal activities, can interfere with the development and survival of oyster larvae. Resultant sedimentation can also adversely affect the setting of oyster larvae by covering clean hard substrates thus making them unavailable to the larvae. During the coldest months of the year, oysters are more susceptible to siltation because their pumping activity is reduced and they are less able to clear away rapidly accumulating silt. During the spring spawning run (mid-March through June) anadromous fish eggs and larvae can be adversely affected by higher than normal levels of suspended sediments. Adult migrations can be impeded especially in narrow streams and rivers where turbidity may reach from bank to bank. The period [illegible]y through [illegible] is a nursery period whe[illegible] develop into juveniles before beginning their migration back to the ocean. Note: This guideline [illegible]

not subject to blanket application in the salinity regimes where it is applicable. Careful case-by-case analysis is required.

7. In relatively large water bodies, overdredging to reduce the frequency of maintenance dredging, should not exceed an additional 60 cm (2 feet) below the controlling depth of the waterway and this should be based on the anticipated sedimentation rate. In narrow canals and other water bodies subject to poor flushing, the dredged depth should not exceed one foot below that of the connecting waters.

Rationale: This guideline balances the benefits of reduced maintenance frequency and thus environmental disturbance with the creation of stagnant or "dead" water which can occur when artifically deep holes are created.

SPECIALIZED STRUCTURES AND ACTIVITIES

D. Channeling into Fastland or Marshes

1. Where feasible, community piers and launching facilities are preferable to channeling into fastlands or marshes for water access in conjunction with urban development.

Rationale: Studies have shown that such channeling leads to water quality problems. Poor water circulation and flushing, combined with contaminating constituents and high nutrient loads from adjacent development often leads to reduced dissolved oxygen levels, noxious odors, uncontrolled algal growth and fish kills.

2. While environmentally objectionable, there may be times when channels into marshes or uplands are permitted. When this is the case, the following criteria should be applied in order to reduce adverse effects:

   a. Channels should be short in length, preferably no longer than twice the width.

   b. Channels should not be dredged more than 1 foot deeper than the controlling depth of the waterway to which they are to be connected.

   c. Channels should not be box-cut but should be dredged with slopes that approximate the natural angle of repose of soils of the area, usually on the order of 3 feet (1 meter) horizontal for every 1 foot (30 cm) vertical.

   d. The top banks of channels should be graded to a slight incline anywhere between mean sea level and mean high tide for an inland distance of at least 3 meters (10 feet). This area should then be planted with marsh vegetation appropriate to the soils and the salinity of waters in the area.

   e. Channels should be significantly shallower at their heads than at their mouths in order to promote better exchange with the natural waterway.

   f. Channel curves and angles should be avoided.

Rationale: The foregoing criteria reduce the potential adverse impacts of channelization by providing for better water circulation and bank stability. The marsh vegetation aids in preventing upland spoils and contaminants from lowering water quality.

E. Dams and Impoundments

1. Dams and impoundments should ordinarily not be located in tidal wetland areas. If some encroachment into such areas is deemed necessary, every effort should be made to limit the encroachment as much as possible and restrict marsh loss to Group 3-5 marshes.

Rationale: Impounding an upland area generally involves a tradeoff of one set of upland habitat values (e.g. hardwood forest) for another set (lake or pond). When tidal wetlands are lost to this same type of development, the loss to the marine environment can be severe and is generally irreplaceable.

2. When a dam or impoundment is constructed in, or adjacent to, a tidal stream, provisions should be incorporated into the design to maintain a flow of freshwater into the estuary.

Rationale: Maintaining a flow will minimize the upstream movement of salt water in the stream and thus reduce large scale aquatic habitat changes due to salinity shift.

3. Dams should incorporate the use of fish ladders in order to minimize the loss of upstream spawning and nursery grounds for marine species.

Rationale: Many commercial and sports fishes are spawned and develop to adult stages above the tidal estuary. These areas are critical to the maintenance of population levels in these species.

4. Techniques which will minimize the possibility of mudwave creation adjacent to the dam site should be implemented when wetlands are present.

Rationale: This guideline limits wetland losses due to impoundments to that immediately in and upstream of the dam site. A mudwave effectively destroys wetlands in its path by raising the substrate elevation above the range of tide.

5. Whenever possible, impoundments should be designed to incorporate shallow water areas capable of supporting emergent vegetation and water tolerant timber.

Rationale: Shallow water habitat within the impoundment can help offset the loss of tidal wetland habitat due to dam construction.

F. Marinas

1. Dry storage type facilities are encouraged in preference to wet-slip complexes.

Rationale: Such facilities minimize adverse impacts to the marine environment and do not occupy space in the water which could be used for recreation by all citizens of the Commonwealth.

2. When siting and designing a marina facility in a coastal waterway, the following should be considered:

a. All structures should be open-pile or floating with any permanent loss of aquatic habitat limited to that which is absolutely necessary.

b. If sited in a small tributary or other poorly circulating body of water, the marina should be situated near the mouth rather than the headwaters.

c. The structures should encroach no more than one third the distance across the waterway except in unusual channel configurations.

d. Marinas should be sited away from productive or actively worked oyster and clam grounds.

e. Consideration should be given to the size and depth of the existing waterway and to the number of boats already housed in the vicinity.

f. Slips for deep draft vessels should be located in the naturally deeper waters of the marina.

g. If the site involves a marsh, all structures except those needed for access (ramps, railways, etc.) should be located landward of or channelward of marsh vegetation.

h. Design of any necessary breakwaters should permit adequate water circulation within the facility to help prevent an accumulation of pollutants. Floating tire or other non-permanent type breakwaters should be considered.

Rationale: The foregoing criteria reduce the potential adverse impacts of marinas by providing for better water circulation, minimizing marine habitat loss, and reducing initial and maintenance dredging requirements.

G. Drainage and mosquito ditches

1. Drainage and mosquito ditches should be designed according to a master plan which will maximize their effectiveness while minimizing their extent as much as possible.

2. Ditches designed along conventional grid patterns are discouraged in favor of ditches which link identified mosquito producing areas within the marsh with tidal waters. Drainage ditches should also be designed to connect to specifically identified areas of poor drainage.

3. Depths should be limited to no more than 1 foot deeper than the connecting waters.

4. Depending on the size of the ditch, dredging should be accomplished "in the dry" (landside to seaward).

5. If dredge material must be placed in the marsh, it should be spread or broadcast as thinly as possible over a broad area with no effective elevation change on the marsh surface. If this is not possible, the dredged material should be placed in small widely separated mounds creating plant diversity and allowing water to circulate over the remaining marsh.

6. Where maintenance dredging is to be accomplished, the dredged material should be placed, to the maximum extent possible, on the old disposal area. If this is in the form of a continuous berm paralleling the ditch, the berm should be breached periodically to promote inundation of the remaining marsh.

7. Rotary ditchers are the preferred means of constructing mosquito ditches and small drainage ditches.

Rationale: Adherence to the above procedures will maximize the effectiveness of the ditches while minimizing adverse impacts to the wetlands.

H. Submarine pipeline crossings

1. Whenever feasible, pipelines should be placed on piles or attached to existing structures.

2. When a pipeline must be buried in the river bottom, the stockpiling of excavated material adjacent to the trench should be avoided.

3. When a pipeline must be buried in a marsh, material may be temporarily placed along side the trench if upon completion all excess material is removed from the marsh, the original elevation is restored, and all denuded areas are resprigged with appropriate vegetation.

Rationale: These guidelines minimize construction impacts to the wetlands and allow for the fastest possible recovery of the natural system after the disturbance.

APPENDIX III-5

Coastal Primary Sand Dune Guidelines: Guidelines for the Permitting of Activities Which Encroach into Coastal Primary Sand Dunes

COASTAL PRIMARY SAND DUNE GUIDELINES

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GUIDELINES FOR THE PERMITTING OF ACTIVITIES WHICH ENCROACH INTO COASTAL PRIMARY SAND DUNES

ISSUED BY THE
VIRGINIA MARINE RESOURCES COMMISSION
2401 WEST AVENUE
NEWPORT NEWS, VIRGINIA 23607

Developed Pursuant to Chapter 2.2 of Title 62.1,
Code of Virginia, These
Guidelines were approved on August 26, 1980 and became effective
September 26, 1980

RECOMMENDED GUIDELINES WHEN ALTERING COASTAL PRIMARY SAND DUNES

In adopting the Coastal Primary Sand Dune Act, the General Assembly established the following standards for construction on sand dunes:

"No permanent alteration or construction upon any coastal primary sand dune shall take place which would:

i. impair the natural functions of the dune as described by the Act

ii. physically alter the contour of the dune

iii. destroy vegetation growing on the dune

Activities contrary to these standards will be permitted only if the wetlands board or Commission finds that there will be no significant adverse ecological impact from the proposal, or that granting a permit for the proposal is clearly necessary and consistent with the public interest."

It is apparent from a reading of the policy and standards of the Act that the General Assembly did not intend a prohibition on all activity in the dunes areas. Instead, the legislators sought a careful balancing of the public and private benefits and detriments of each proposal. Some proposed development in the dunes area can be accommodated by utilizing proper location and design methods. Each proposal will likely be unique with respect to the necessity for the project and its probable effects on the beneficial value of dunes. Therefore, criteria must be applied on a case by case basis. The objective of these criteria is to provide guidance which will direct development into an accommodation with the ecology of the coastal primary sand dune.

Guidelines

A. Provided the beneficial attributes of coastal primary sand dunes as discussed above are not significantly disturbed, alteration of dunes may be justified in order to:

1. Construct water access dependent facilities which must pass over the coastal primary sand dune for such access.

Such construction as might be allowed in item 1) above must be constructed in a manner which will minimize alteration of the dune slope during and after construction. Encroachment on the backside of a primary dune should be limited to the minimum necessary. In addition to other requirements that may apply for construction, only structures with open pile foundations should be constructed.

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Rationale

The requirement that any construction on the dune backside must utilize an open pile foundation design is based upon consideration of the dynamics of dune movement, the compatability of housing within the dune system, and the need to protect life and property within the fastland fringing the beach zone.

During times of severe storms, the entire primary dune system may yield to excavation by elevated water levels accompanied by high waves. Structures on slab foundations or designs other than open piling may be expected to exhibit structural failure. Such slab foundations also generally require the excavation of the dune backface for placement and do not allow for the natural migration of the dune. During periods of normal weather and sea state, and during post-storm periods of natural dune rebuilding, the backside of the dune is a zone of sand deposition. Structures elevated on open piling foundations will be less susceptible to burial by encroachment and deposition.

Bridging the dunes to gain access for certain water dependent activities may be permitted when those activities are deemed necessary. In such cases, elevated open piling foundations will minimize disturbance of natural dune building processes.

It should be noted that a requirement for open pile foundations is consistent with existing requirements of the National Flood Insurance Act.

B. Alteration of coastal primary sand dunes is ordinarily not justified:

i. for purposes of activities which can be accommodated without encroachment into the dune area.

Rationale

It is clearly the intent of the legislature to protect the primary sand dunes from unnecessary despoliation. Therefore, activities which have no inherent need to be immediately adjacent to the shore or for which there is sufficient room landward of the coastal primary sand dune may not require modification of the dune.

ii. where the construction is proposed on the dune crest or seaward of the dune crest.

Rationale

The beach backshore is the primary sand supply for the primary dune and the foreface and crest of the deposit are the most active transport zones in the dune system. Construction on the backshore, frontal face and crest is thus likely to disrupt the transport system. In particular, construction on the crest and/or frontal face will cause local deflation of the sand elevations causing local weaknesses in the integrity of the dune system.

iii. where the dune location must be modified in order to accommodate the proposed construction activity.

Rationale

The natural location of the primary dune is the result of all beach processes. The natural dune position is just beyond the reach of

normal beach modulations. Relocation of the dune by artificial means to a more seaward or landward location is likely to result in a loss of the sand stored in the dune. This will reduce the integrity of the dune line and compromise the ability of the dune to protect against storm flooding and erosion.

iv. where alteration of the dune would likely result in damage to neighboring property owners.

Rationale

Construction within a primary coastal dune may lead to weaknesses in the protective attributes of the system. Under severe storm attack, the weakness may lead to failure causing that site to become the locus of wave overwash activity. The breach in the system can reasonably be expected to widen to neighboring properties and cause otherwise avoidable damage.

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In addition, during the periods of dune regrowth, the new sand deposits may encroach upon the developed zone of the neighboring lots.

CONSIDERATIONS FOR CONSTRUCTION AND MITIGATION ACTIVITIES IN THE AREA OF COASTAL PRIMARY SAND DUNES

Due to the constantly changing nature of dunes and the possible wind, wave and scour action they may be subjected to, the design, location selection, and construction of structures in dune areas should be done by qualified professionals. As a recommended minimum, all elements of beach front structures, including the foundation and non-structural fastenings and components, should be designed to withstand the wind and wave forces of a 100 year storm. The first habitable floor of a building should be elevated on a piling foundation to a height above the crest of the 100 year design wave. Any construction in the space below the first floor should incorporate breakaway walls intended to collapse under stress without jeopardizing the structural support of the building. The piling foundation should safely transmit to the ground the full vertical and horizontal loads imposed on the superstructure by 100 year design storms. It should present as slender a profile as possible while being durable enough to resist storm loads, which may include the impact of floating debris. Pilings should be spaced such that no one row of piles is subject to significant wave forces at any one time and the spacing should provide for unhindered movement of water and debris between piles. Pilings should be of a circumference which minimizes induced concentration of wave force and consequent erosion and scour at the base, yet they should penetrate deeply enough (6 to 20 feet below mean sea level) and have sufficient strength to safely support the superstructure when the surrounding material is eroded down to the lowest predictable level. The foundation should be of a material which will resist deterioration in a corrosive marine environment. Structures with large areas in contact with the ground, such as swimming pools, decks, and slab foundations, should be discouraged. The ground below the first habitable floor should not be paved or altered, however, shell or marl are suitable when used to stabilize driveways. Telephone and electric lines should be located underground in water proof conduits laid in protected areas not subject to erosion. Water and sewage facilities should also be located in protected areas not subject to erosion.

Vegetation is the most effective protection for the land against the sea in establishing and maintaining a coastal position, and for that reason, during permitted construction, all precautions should be taken to retain as much natural vegetation as possible on the dunes and upper beaches. When walkways and platforms are located over a dune system, they should be elevated sufficiently to provide for the continued healthy growth of the vegetation below (3 feet minimum). Restoration of destroyed dunes can be accomplished by creating fills using slat or brush fencing or by moving upper beach sand by machi[illegible] Both procedures sh[illegible] [illegible]ed by long-term plantings of

vegetation to replace that which was destroyed and to stabilize the dune. For the restoration of a long foredune, the fence should be aligned parallel to primary dunes in the vicinity and somewhat parallel to the drift line berm of the upper beach. The fence should be far enough back to allow the wind to move an adequate supply of sand against it, and placed so as not to bury existing vegetation. To build fills and help reform dune topography in smaller areas, fences should be built across the direction of prevailing winds. The newly created fill material should then be stabilized with plantings.

APPENDIX III-6

Regulations of the Commission of Game and Inland Fisheries, Commonwealth of Virginia

REGULATIONS

OF THE

COMMISSION OF GAME AND INLAND FISHERIES COMMONWEALTH OF VIRGINIA

R23-1. Continuous open season for all species except trout.

Except as otherwise specifically provided by regulations appearing in this chapter, there shall be a continuous open season for fishing to take all species of fish except trout.

R23-2. Creel limits.

The creel limits for the various species of fish shall be as follows:

Largemouth, smallmouth and spotted bass, eight a day in the aggregate;

Landlocked striped bass and landlocked striped bass X hybrids, in the aggregate, four a day, except that in Smith Mountain Reservoir and its tributaries including the Roanoke River upstream to Niagara Dam the limit shall be two a day in the aggregate.

White bass, no limit, except that in Gaston Reservoir the limit shall be twenty-five;

Walleye or yellow pike perch and chain pickerel or jackfish, eight a day of each, provided that ten walleye a day may be taken from South Holston Reservoir below full pool elevation of 1730;

Northern pike and muskellunge, two a day;

Sauger, no limit, provided that only fifteen a day may be taken from South Holston Reservoir below full pool elevation of 1730;

Bluegill (bream) and other sunfish, including crappie or silver perch and rock bass or redeye, no limit. (Amended 5-5-72; 5-4-73; 2-22-80; 2-19-81; 10-15-82, effective 1-1-83.)

R23-3. Size limit.

Except as provided in this regulation and in R24-5.1, R24-10.1, R24-10.2, and R24-10.3, there shall be no size limit on any species of fish. There shall, however, be a twenty-six inch minimum size limit on muskellunge, a twenty-inch minimum size limit on northern pike and a twenty-inch minimum size limit on landlocked striped bass (rockfish) and landlocked striped bass X white bass hybrids. Also, there shall be a twelve-inch minimum size limit on largemouth, smallmouth and spotted bass in the North Fork of Pound Reservoir and in the Roanoke (Staunton) and Dan Rivers and their tributaries downstream from Niagara Dam on the Roanoke River and the Brantly Steam Plant Dam on the Dan River, except in the John Kerr and Gaston Reservoirs on the Roanoke (Staunton) and Dan Rivers, and the North Fork Shenandoah River downstream from Route 42 bridge at Timberville and the Shenandoah River below the Riverton Dam to the West Virginia boundary line and the New River from Clayton Dam to the West Virginia boundary line, and in the North Anna, Chickahominy, Claytor, Philpott and Flannagan reservoirs and Beaverdam Reservoir in Loudoun County, and in Lake Moomaw (Gathright Project) and in the waters of Fort A.P. Hill, and in the waters of Quantico Marine Reservation. It shall be unlawful to have any largemouth, smallmouth or spotted bass less than twelve inches in length in one's possession while on any of the waters mentioned in the preceding sentence. There shall be a fourteen-inch minimum size limit on largemouth, smallmouth and spotted bass in John Kerr and Gaston Reservoirs, except that as many as two of such bass of a lesser size caught in such waters may be retained in the creel, but no more than two such bass may be in possession on such waters that are less than fourteen inches in length. It shall be unlawful to have any largemouth,

smallmouth or spotted bass from twelve to fifteen inches in length, both inclusive, in one's possession on Chesdin Reservoir or the Appomattox River from the Brasfield (Chesdin) Dam to Bevel's Bridge on Chesterfield County Route 602. It shall be unlawful to have any walleye or yellow pike perch less than fifteen inches in length in one's possession on Gaston Reservoir. It shall be unlawful to have any smallmouth, largemouth or spotted bass from eleven to thirteen inches in length, both inclusive, in one's possession on the South Fork Shenandoah River from the Luray Power Dam near Luray downstream to its confluence with the North Fork Shenandoah River at Riverton. (Amended 5-5-67; 4-20-68; 4-29-71; 5-5-72; 5-4-73; 5-3-74; 5-2-75; 4-15-77; 2-24-78; 2-23-79; 2-22-80; 2-19-81; 10-16-81; 10-15-82, effective 1-1-83.)

R23-4. Sale of game fish or catfish prohibited.

It shall be unlawful to sell, offer for sale or buy any species of freshwater game fish or catfish, provided that this shall not apply to game fish sold pursuant to Code of Virginia § 29-114.1 or to R24-12 and R24-13 or to any catfish taken from tidewater or those artificially raised. (Amended 5-7-76, effective 7-1-76.)

R23-6. Permit required for importation, etc., of certain species.

In accordance with authority conferred by § 29-11 of the Code of Virginia, the Commission finds and declares the following species to be predatory or undesirable within the meaning and intent of those terms as used in § 29-158 of the Code, in that their introduction into the State will be detrimental to the native fish resources of Virginia: Piranha (any of the genus Serrasalmus, Rooseveltiella, Pygocentrus), walking catfish (any of genus Clarias), cichlid (Texas) perch (Chichlasoma cyanoguttatum), grass carp (any of genus Ctenopharyngodon) or any hybridized derivative of the grass carp.

It shall be unlawful, pursuant to § 29-158 of the Code, to import, cause to be imported, buy, sell or offer for sale or liberate within the State any of the abovenamed species unless a permit therefor is first obtained from the Commission. (Added 5-4-73; amended 2-24-78; 2-23-79; 10-15-82, effective 1-1-83.)

APPENDIX III-7

Commonwealth of Virginia State Water Control Board Wetlands Policy

Commonwealth of Virginia

STATE WATER CONTROL BOARD

WETLANDS POLICY

Adopted: May 7, 1974 in Letter Ballot No. 3310.

Filed: May 24, 1974

Effective: June 23, 1974.

PURPOSE

The purpose of this policy is to establish the policy of the State Water Control Board in order to support the principles of the Wetlands Act, in dealing with water quality of the wetlands of the Commonwealth.

Further, this establishes the policy of the Board to preserve the wetland ecosystems and to protect them from destruction by (a) reduction or elimination of deleterious point source or non-point source discharges to state waters which wash over wetlands, (b) the treatment or control of these discharges, (c) the development and construction of waste water treatment facilities, and (d) other physical, chemical, or biological means.

THE WETLAND RESOURCE

a. Wetlands represent an ecosystem of unique and major importance to the citizens of this Commonwealth and, as a result, they require extraordinary protection. Comparable destructive forces would be expected to inflict more lasting damage to them than to other ecosystems. The Constitution of Virginia establishes a strong policy of natural resource protection. The General Assembly has recognized the importance of wetlands in its policy set forth in Title 62.1, Chapter 2.1 of the Code of Virginia (The Wetlands Act). And, the General Assembly has provided in Title 62.1, Chapter 3.1 of the Code of Virginia (The State Water Control Law) that it is the policy of the Commonwealth to protect existing high quality State waters and restore all other State waters to such condition of quality that any such waters will support the propagation and growth of all aquatic life which might reasonably be expected to inhabit them. Through this policy statement, the Board establishes appropriate safeguards for the preservation and protection of the wetland resource from the damage caused by inappropriate discharges to the waters of the State which wash over the wetlands.

b. The wetlands of the Commonwealth, including marshes, swamps, bogs, and other low-lying areas, which during some period of the year will be covered in part by natural non-flood waters, are a unique, valuable, and irreplacable natural resource. They serve as a habitat for important fur-bearing mammals, many species of fish, and waterfowl. Such areas moderate extremes in water flow, aid in the natural purification of water, and maintain and recharge the groundwater resource. They are the nursery areas for a great number of wildlife and aquatic species of significant commercial and recreational value to the citizens of the Commonwealth, and serve at times as the source of valuable harvestable timber. They are unique recreational areas, high in aesthetic value, that contain delicate and irreplacable specimens of fauna and flora and support fishing, as well as wildfowl and other hunting.

c. Fresh-water wetlands support the adjacent or downstream aquatic ecosystem in addition to the complex web of life that has developed within the wetland environment. The relationship of the fresh-water wetland to the subsurface environment is symbiotic, intricate, and fragile. In the tidal wetland areas the tides tend to redistribute the nutrients and sediments throughout the tidal marsh and these in turn form a substrate for the life supported by the tidal marsh. These marshes produce large quantities of plant life that are the source of much of the organic matter consumed by shellfish and other aquatic life in associated estuaries.

d. Protection of wetland areas requires the proper control of any construction activities and of non-point sources to prevent discharges which will impair the quality of the wetland area. Alteration in quantity or quality of the natural flow of water, which nourishes the ecosystem, should be minimized. The addition of harmful waste waters or nutrients contained in such waters should be kept below a level that will alter the natural, physical, chemical, or biological integrity of the wetland area and that will insure no significant increase in nuisance organisms through biostimulation.

POLICY

a. In its decision processes, it shall be the Board's policy to give particular cognizance and consideration to any proposal to the State Water Control Board that has the potential to damage wetlands, to recognize the irreplacable value and man's dependence on them to maintain an environment acceptable to society, and to preserve and protect them from damaging misuses.

b. It shall be the Board's policy to minimize alteration in the quantity or quality of the natural flow of water that nourishes wetlands and to protect wetlands from adverse dredging or filling practices, solid waste management practices, siltation, or the addition of pesticides, salts, or toxic materials arising from non-point source wastes and through construction activities, and to prevent violation of applicable water quality standards from such environmental insults.

c. It shall be the policy of this Board not to approve the construction of of waste water treatment facilities or other waste treatment-associated appurtenances which may interfere with the existing wetland ecosystem except where no other alternative of lesser environmental damage is found to be feasible. In the application for such facilities or appurtenances, where there is reason to believe that wetlands will be damaged, an assessment will be requested from the applicant that delineates the various alternatives that have been investigated for the control or treatment of the waste water, including the reasons for rejecting those alternatives not used. A full economic appraisal of all alternatives should be included to the extent possible.

d. To promote the most environmentally protective measures for the wetlands, it shall be the policy of the Board to advise those applicants for waste treatment facilities that the selection of the most environmentally protective alternative should be made, and to advise those applicants for discharge permits for all other activities which may affect the wetlands that those activities should be carried out in the most environmentally protective manner. The Virginia Institute of Marine Science, the Marine Resources Commission, and any other appropriate State or Federal agency will be consulted to aid in the determination of the probable impact on the pertinent fish and wildlife resources of wetlands. In the event of projected significant adverse environmental impact, a public hearing on the wetlands issue may be held to aid in the selection of the most appropriate action, and the Board may deny the issuance of a discharge permit, and may recommend against the furnishing of appropriate State or Federal grant funds.

IMPLEMENTATION

The Board will apply this policy to the extent of its authorities in conducting all program activities, including regulatory activities, research, development and demonstration, technical assistance, and the administration of all State and Federal grants programs.

APPENDIX III-8

General Criteria for Controlling Erosion and Sediment from Land Disturbing Activities

GENERAL CRITERIA FOR CONTROLLING EROSION AND SEDIMENT FROM LAND DISTURBING ACTIVITIES

Application of General Criteria

The General Criteria are minimum State requirements for controlling erosion and sedimentation from "land disturbing activities". These General Criteria do not replace the requirement for individually developed erosion and sediment control plans; however, they do establish minimum standards of soil conservation practice which apply to all land disturbing projects.

Applicable General Criteria should be satisfied in each approved erosion and sediment control plan; however, if a plan is found to be inadequate (with respect to the General Criteria) in the field, they apply in addition to the provisions of the approved plan, unless a variance has been granted. Local inspectors and persons responsible for carrying out approved plans must therefore be aware of the General Criteria as well as the provisions of the approved plans themselves.

Nothing in the General Criteria shall limit the right of the Plan Approving Authority to impose additional or more stringent standards for controlling erosion and sedimentation during the plan approval process.

Variances

The Plan Approving Authority may waive or modify any of the General Criteria which are deemed inappropriate or too restrictive for site conditions, by granting a variance. Variances may be granted under the following conditions:

1. At the time of plan submission, an applicant may request variances to become part of the approved erosion and sediment control plan. The applicant must explain the reasons for requesting variances in writing. Specific variances which are allowed by the Plan Approving Authority must be documented on the approved plan.

2. During construction, the person responsible for implementing the approved plan may request variances in writing to the Plan Approving Authority. The Plan Approving Authority must respond in writing approving or disapproving such request. Without a written approval, no variances shall be considered valid. The Plan Approving Authority should respond to variance requests within 10 days.

The variance procedure is an important element of the plan review and enforcement programs. It is intended to maintain a necessary flexible working relationship between local officials and applicants. Plan Approving Authorities should consider variance requests judiciously, keeping

in mind both the need of the applicant to maximize cost-effectiveness and the need to protect off-site properties and resources from damage.

Conservation Practices

The General Criteria relate to the application of erosion and sediment control practices specified in this chapter; however, other innovative practices or modifications to State-specified practices may be used if approved by the Plan Approving Authority prior to installation. Such practices must be thoroughly described and detailed to the satisfaction of the Plan Approving Authority.

GENERAL CRITERIA

GC-1 STABILIZATION OF DENUDED AREAS AND SOIL STOCKPILES

A. Permanent or temporary soil stabilization must be applied to denuded areas within 15 days after final grade is reached on any portion of the site. Soil stabilization must also be applied within 15 days to denuded areas which may not be at final grade but will remain dormant (undisturbed) for longer than 60 days.

   Soil stabilization refers to measures which protect soil from the erosive forces of raindrop impact and flowing water. Applicable practices include vegetative establishment, mulching, and the early application of gravel base on areas to be paved. Soil stabilization measures should be selected to be appropriate for the time of year, site conditions and estimated duration of use.

B. Soil stockpiles must be stabilized or protected with sediment trapping measures to prevent soil loss.

GC-2 ESTABLISHMENT OF PERMANENT VEGETATION

A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved which, in the opinion of the Local Program Administrator or his designated agent, is mature enough to control soil erosion satisfactorily and to survive severe weather conditions.

GC-3 PROTECTION OF ADJACENT PROPERTIES

Properties adjacent to the site of a land disturbance shall be protected from sediment deposition. This may be accomplished by preserving a well-vegetated buffer strip around the lower perimeter of the land disturbance, by installing perimeter controls such as sediment barriers, filters or dikes, or sediment basins, or by a combination of such measures.

Vegetated buffer strips may be used alone only where runoff in sheet flow is expected. Buffer strips should be at least 20 feet in width. If at any time it is found that a vegetated buffer strip alone is ineffec-

tive in stopping sediment movement onto adjacent property, additional perimeter controls must be provided.

GC-4 TIMING AND STABILIZATION OF SEDIMENT TRAPPING MEASURES

Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment on-site must be constructed as a first step in grading and be made functional before upslope land disturbance takes place. Earthen structures such as dams, dikes, and diversions must be seeded and mulched within 15 days of installation.

GC-5 SEDIMENT BASINS

Stormwater runoff from drainage areas with five acres or greater disturbed area must pass through a SEDIMENT BASIN (Std. & Spec. 1.26) or other suitable sediment trapping facility with equivalent or greater storage capacity. The Plan Approving Authority may require sediment basins or traps for smaller disturbed areas where deemed necessary. The sediment basin requirement may also be waived, by variance, if the Plan Approving Authority agrees that site conditions do not warrant its construction.

GC-6 CUT AND FILL SLOPES

Cut and fill slopes must be designed and constructed in a manner which will minimize erosion. Consideration must be given to the length and steepness of the slope, the soil type, upslope drainage area, groundwater conditions and other applicable factors. Slopes which are found to be eroding excessively within one year of construction must be provided with additional slope stabilizing measures until the problem is corrected. The following guidelines are provided to aid site planners and plan reviewers in developing an adequate design.

A. Roughened soil surfaces are generally preferred to smooth surfaces on slopes. (See SURFACE ROUGHENING, Std. & Spec. 1.60)

B. DIVERSIONS (Std. & Spec. 1.18) should be constructed at the top of long steep slopes which have significant drainage areas above the slope. Diversions or terraces may also be used to reduce slope length.

C. Concentrated stormwater should not be allowed to flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure (see Std. & Spec. 1.30, 1.31 and 1.35).

D. Wherever a slope face crosses a water seepage plane which endangers the stability of the slope, adequate drainage or other protection should be provided. (See Std. & Spec. 1.37 and 1.50).

GC-7 STORMWATER MANAGEMENT CRITERIA FOR CONTROLLING OFF-SITE EROSION

Properties and waterways downstream from development sites shall be protected from erosion due to increases in the volume, velocity and peak flow rate of stormwater runoff.

To satisfy this requirement, each locality or conservation district which has adopted an approved local erosion and sediment control ordinance or program may establish its own local stormwater management criteria. However, such criteria must first be approved by the Virginia Soil and Water Conservation Commission to assure that they adequately address the problem of off-site erosion. In the absence of local stormwater management criteria which have been approved by the Commission, the following criteria shall apply:

A. Concentrated stormwater runoff leaving a development site must be discharged directly into a well-defined, natural or man-made off-site receiving channel or pipe. If there is no well-defined off-site receiving channel or pipe, one must be constructed to convey stormwater to the nearest adequate channel. Newly constructed channels shall be designed as adequate cahnnels.

   An adequate channel shall be defined as a natural or man-made channel or pipe which is capable of conveying the runoff from a 2-year storm without overtopping its banks or eroding after development of the site in question. A receiving channel may also be considered adequate at any point where the total contributing drainage area is at least 100 times greater than the drainage area of the development site in question; or, if it can be shown that the peak rate of runoff from the site for a 2-year storm will not be increased after development.

   Runoff rate and channel adequacy must be verified with engineering calculations in accordance with the procedures outlined in Chapter 5 of the 1980 Virginia Erosion and Sediment Control Handbook or other methods acceptable to the Plan Approving Authority.

B. If an existing off-site receiving channel is not an adequate channel, the applicant must choose one of the following options:

   1. Obtain permission from downstream property owners to improve the receiving channel to an adequate condition. Such improvements shall extend downstream until an adequate channel section is reached. (See Chapter 5 of the 1980 Virginia Erosion and Sediment Control Handbook)

      or

   2. Develop a site design that will not cause the pre-development peak runoff rate from a 2-year storm to increase. Such a design may be accomplished by enhancing the infiltration capability of the site or by providing on-site stormwater detention measures. The pre-development and post-development peak runoff rates must be verified by engineering calculations. (See Chapter 5 of the 1980 Virginia Erosion and Sediment Control Handbook)

      or

   3. Provide a combination of channel improvement, stormwater detention, or other measures which is satisfactory to the Plan Approving Authority to prevent downstream channel erosion.

C. All channel improvements or modifications must comply with all applicable laws and regulations. Modifications to flowing streams should be made in accordance with Best Management Practices for Hydrologic Modifications (80).

D. If the applicant chooses an option which includes stormwater detention, he must provide the locality with a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the party responsible for performing the maintenance. The responsible party may be an individual, organization or the local government--whichever has consented to carry out the maintenance. If the designated maintenance responsibility is with an individual or organization other than a local government, a maintenance agreement should be executed between the responsible party and the local government.

E. Increased volumes of unconcentrated sheet flows which will cause erosion or sedimentation on adjacent property must be diverted to a stable outlet or detention facility.

F. In applying these stormwater management criteria, individual lots in subdivision developments shall not be considered separate development projects, but rather the subdivision development, as a whole, shall be considered a single development project.

GC-8 STABILIZATION OF WATERWAYS AND OUTLETS

All on-site stormwater conveyance channels shall be designed and constructed to withstand the expected velocity of flow from a 2-year frequency storm without erosion (see Std. & Spec. 1.35). Stabilization adequate to prevent erosion must also be provided at the outlets of all pipes and paved channels (see Std. & Spec. 1.36).

GC-9 STORM SEWER INLET PROTECTION

All storm sewer inlets which are made operable during construction shall be protected so that sediment-laden water will not enter the conveyance system without first being filtered or otherwise treated to remove sediment (see Std. & Spec. 1.08).

GC-10 WORKING IN OR CROSSING WATERCOURSES

A. Construction vehicles should be kept out of watercourses to the extent possible. Where in-channel work is necessary, precautions must be taken to stabilize the work area during construction to minimize erosion. The channel (including bed and banks) must always be restabilized immediately after in-channel work is completed (see Std. & Spec. 1.45 and 1.46).

B. Where a live (wet) watercourse must be crossed by construction vehicles regularly during construction, a TEMPORARY STREAM CROSSING must be provided (see Std. & Spec. 1.47).

GC-11 UNDERGROUND UTILITY CONSTRUCTION

The construction of non-exemot* underground utility lines shall be subject to the following criteria:

A. No more than 500 feet of trench are to be opened at one time.

B. Where consistent with safety and space considerations, excavated material is to be placed on the uphill side of trenches.

C. Trench dewatering devices shall discharge in a manner which will not adversely affect flowing streams, drainage systems or off-site property.

GC-12 CONSTRUCTION ACCESS ROUTES

Wherever construction vehicle access routes intersect paved public roads, provisions must be made to minimize the transport of sediment (mud) by runoff or vehicle tracking onto the paved surface (see Std. & Spec. 1.01 and 1.02). Where sediment is transported onto a public road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling or sweeping and be transported to a sediment controlled disposal area. Street washing shall be allowed only after sediment is removed in this manner.

GC-13 DISPOSITION OF TEMPORARY MEASURES

All temporary erosion and sediment control measures shall be disposed of within 30 days after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the local program administrator. Trapped sediment and other disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

GC-14 MAINTENANCE

All temporary and permanent erosion and sediment control practices must be maintained and repaired as needed to assure continued performance of their intended function.

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*Non-exemot utility construction includes the installation, maintenance or repair of all utilities which disturb more than 10,000 square feet except:

1. Individual service connections.

2. Telephone and electric lines.

3. Underground public utility lines under existing hard surfaced roads, streets, or sidewalks, provided such land disturbing activity is confined to the area which is hard surfaced.

APPENDIX III-9

Commonwealth of Virginia State Water Control Board Regulation No.6 National Pollutant Discharge Elimination System (NPDES) Permit Program

Commonwealth of Virginia

STATE WATER CONTROL BOARD

Regulation No. 6

National Pollutant Discharge Elimination System (NPDES) Permit Program

Adopted: January 23-24, 1975 in Minute 19.

Filed: January 24, 1975.

Effective: February 23, 1975.

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Filed: February 2, 1981.

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SUBPART A – GENERAL

6.1. Scope & Purpose.

The following regulations delineate the authority and general procedures to be followed in connection with any NPDES permits issued by the Board authorizing discharges of pollutants into State waters during the periods that the Board may be authorized to issue such permits pursuant to Sections 402, 318, and 405 of the Act. During any periods in which the Board may not be authorized to issue such permits pursuant to Sections 402, 318, and 405 of the Act, these regulations shall remain in full force and effect with respect to any certificates or NPDES permits authorizing discharges of pollutants into State waters issued by the Board pursuant to Section 62.1-44.15(5) of the Code of Virginia (1950), as amended.

6.2. Authority for Regulations.

The authority for these regulations is vested in the Board by the State Water Control Law, Section 62.1-44.2 et seq. of the Code of Virginia (1950), as amended.

6.3. Definitions.

Unless a different meaning is required by the context, the following terms as used in these regulations shall have the meanings hereinafter respectively ascribed to them:

(1) *"Law"* means the State Water Control Law, Section 62.1-44.2 et seq. of the Code of Virginia (1950), as amended.

(2) *"Act"* means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L.92-500, as amended by Pub. L.95-217 and Pub. L.95-576, 33 U.S.C. 1251 et seq.

(3) *"Board"* means the State Water Control Board.

(4) *"State waters"* means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction.

(5) *"NPDES" ("National Pollutant Discharge Elimination System")* means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements pursuant to Sections 307, 402, 318, and 405 of the Act.

(6) *"NPDES application"* means the uniform national forms (including subsequent additions, revisions, or modifications) duly promulgated by EPA pursuant to the Act, including any modifications to such forms required by the Board, for application for a NPDES permit.

(7) *"NPDES form"* means any issued NPDES permit and any uniform national

form developed for use in the NPDES, including any addition to such form required by the Board, and prescribed in regulations promulgated by EPA including the NPDES application and the NPDES Discharge Monitoring Report (DMR) forms.

(8) *"NPDES permit"* means any permit authorizing the potential or actual discharge of pollutants, under prescribed conditions, to State waters pursuant to these regulations.

(9) *"NPDES Discharge Monitoring Report" ("DMR")* means any EPA approved form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results of permittees.

(10) *"Applicable effluent standards and limitations"* means all State, interstate and Federal standards and limitations to which a discharge or related activity is subject under the Law or the Act including effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the Act.

(11) *Approved POTW Pretreatment Program* – defined at Section 6.71.

(12) *Average monthly discharge limitation* – defined at Section 6.16(c)(3).

(13) *Average weekly discharge limitation* – defined at Section 6.16(c)(4).

(14) *"Best management practices" ("BMP's")* includes treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage as may be required by Sections 304(e) and 402(a)(1) of the Act.

(15) The term *"biological monitoring"* or *"biomonitoring"* refers to the repeated measurement of physiological responses of organisms and/or their systems to environmentally induced conditions. This may include:

(i) The determination of the effects on aquatic life, including accumulation of pollutants in tissue, in State waters due to the discharge of pollutants by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and at appropriate frequencies and locations.

(ii) The use of acute or chronic tests which directly measure effluent toxicity to aquatic organisms. These toxicity tests can be used to identify toxic discharges and may help establish effluent limits for permits.

(16) *Bypass* – defined at Section 6.14(m)(1)(i).

(17) *"Certificate"* means any certificate issued by the Board. A NPDES permit issued by the Board is a certificate.

(18) *Cold water aquatic animals* – defined at Section 6.62(b)(2).

(19) *Commercial laboratory* – defined at Section 6.45(a).

(20) *Concentrated aquatic animal production facility* – defined at Section 6.62(b)(1).

(21) *Continuous discharge* – defined at Section 6.16(c)(1).

(22) *"Direct discharge"* means the *"discharge of a pollutant"*.

(23) *"Discharge"* for the purposes of these regulations when used without qualification means the discharge of a pollutant.

(24) *"Discharge of a pollutant"* means:

(i) Any addition of any pollutant or combination of pollutants to State waters from any point source, or

(ii) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation and in compliance with Section 312 of the Act.

This definition may include discharges into State waters from:

(i) Surface runoff that is collected or channeled by man;

(ii) Discharges through pipes, sewers, or other conveyances owned by the State, municipality or other party that do not lead to treatment works; and

(iii) Discharges through pipes, sewers, or other conveyances, leading into non-publicly owned treatment works.

(25) *"Effluent limitations"* means any restrictions or prohibitions or permit requirements established under State or Federal law including, but not limited to, standards of performance for new sources, toxic effluent standards and ocean discharge criteria, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into State waters.

(26) *"Establishment"* means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal processing operation, 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.

(27) *"Environmental Protection Agency" ("EPA")* means the United States Environmental Protection Agency.

(28) *Existing source* – defined at Section 6.65(a)(3).

(29) *Facilities or equipment* – defined at Section 6.65(a)(5).

(30) *"Formal hearing"* means a public proceeding for the taking of evidence, held under Section 9-6.14:12 of the Code of Virginia (1950), as amended, or the Law, and under the Board's Procedural Rule No. 1, or its successor.

(31) *General NPDES permit* – defined at Section 6.66(a)(2).

(32) *"Indirect discharger"* means an industrial waste discharger introducing pollutants into a treatment works other than his own.

(33) *Industrial User* – defined at Section 6.71(b).

(34) *"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.

(35) *"Interstate agency"* means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by EPA.

(36) *Log sorting and log storage facilities* – defined at Section 6.64(b)(3).

(37) *Maximum daily discharge* – defined at Section 6.16(c)(2).

(38) *"Municipality"* means a city, town, county, district, association, or other political subdivision created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Act.

(39) *National Pretreatment Standard* – defined at Section 6.71(c).

(40) *"New discharger"* means any building, structure, facility or installation:

(i) Which on October 18, 1972, had never discharged pollutants;

(ii) Which had never received a finally effective NPDES permit;

(iii) From which there is or may be a new or additional discharge of pollutants;

(iv) Which is an indirect discharger that commences a discharge to State waters; and

(v) Which does not fall within the definition of new source.

(41) *"New source"* means any building, structure, facility or installation from which there is or may be a discharge of pollutants the construction of which commences:

(i) After promulgation of standards of performance under Section 306 of the Act which are applicable to such source; or

(ii) After proposal of standards of performance under Section 306 of the Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

(42) *"Operator"* means any person employed or appointed by any owner, and who is designated by such owner to be the person controlling the operations of the treatment works, including direct actions, decisions or evaluations which affect the quality of the discharge, and whose duties include testing or evaluation to control treatment works operations.

(43) *"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.

(44) *"Owner"* means the State or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities; any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country; or any person or group of persons acting individually or as a group, and shall include any permittee under a NPDES permit. For the purposes of this regulation, "owner" shall also mean any responsible corporate officer so designated in the applicable permit.

(45) *"Permittee"* means any owner to whom a NPDES permit has been issued by the Board.

(46) *"Person"* means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, agency, political subdivision of a State or any interstate body, or an agent or employee thereof.

(47) *"Point source"* means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(48) *"Pollutant"* means any substance, radioactive material, or waste heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean:

(i) Sewage from vessels; or

(ii) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the Board, and if the Board determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(49) *"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:

(i) Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life:

(ii) Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

(iii) Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses:

provided that:

(A) An alteration of the physical, chemical, or biological properties 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 or discharge or deposit to State waters by other owners is sufficient to cause pollution,

(B) The discharge of untreated sewage by any owner into State waters, and

(C) Contributing to the contravention of water quality standards duly established by the Board,

are "pollution" for the terms and purposes of this regulation.

(50) *Pretreatment* – defined at Section 6.71(e).

(51) *Pretreatment Requirement* – defined at Section 6.71(f).

(52) *"Process wastewater"* means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(53) *"Public Hearing"* means an informal fact-finding proceeding, under Section 9-6.14:11 of the Code of Virginia (1950), as amended, the Law and the Board's Procedural Rule No. 1, or its successor, held to afford interested persons an opportunity to submit factual data, views, and arguments to the Board.

(54) *"Publicly owned treatment works" ("POTW")* means a treatment works as defined herein, which is owned by the State or a municipality, excluding any sewers or other conveyances not leading to a facility providing treatment.

(55) *"Radioactive Material"* means those radioactive materials not encompassed in the definitions of source, byproduct or special nuclear materials in the Atomic Energy Act of 1954, as amended.

(56) *"Residues"* means the solids, sludges, and precipitates separated from or created by the unit processes of a treatment works.

(57) *Rock crushing and gravel washing facilities* – defined at Section 6.64(b)(2).

(58) *"Schedule of compliance"* means a schedule of necessary measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, standard, or water quality standard.

(59) *Separate Storm Sewer* – defined at Section 6.63(b)(1).

(60) *Severe property damage* – defined at Section 6.14(m)(1)(ii).

(61) *"Sewage"* means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, under-

ground, surface, storm, or other water as may be present.

(62) *"Sewage from vessels"* means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of the Act.

(63) *Silvicultural point source* – defined at Section 6.64(b)(1).

(64) *Site* – defined at Section 6.65(a)(4).

(65) *Source* – defined at Section 6.65(a)(2).

(66) *"Toxic Pollutant"* means any pollutant listed as toxic under Section 307(a)(1) of the Act.

(67) *"Treatment works"* means any devices and systems used in the storage, treatment, recycling, and/or reclamation of sewage or industrial wastes, or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extension, improvement, remodeling, additions, and alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; however, "treatment facilities" shall include only those mechanical devices necessary for the transmission and treatment of pollutants (e.g., unit treatment processes and pump stations).

(68) *Upset* – defined at Section 6.14(n)(1).

(69) *"Variance"* means any mechanism or provision under Sections 301 or 316 of the Act, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements or time deadlines of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors and Sections 301(c), 301(g), 301(h), 301(i), and 316(a) of the Act, where appropriate.

(70) *Warm water aquatic animals* – defined at Section 6.62(b)(3).

(71) *"Water quality standards"* means any water quality standards established by the Board pursuant to the Law or by EPA under the Act, and effective under State and/or Federal law.

6.4 Prohibition of Discharges into State Waters.

No owner shall discharge any pollutant, including sewage, industrial wastes or other wastes, into, or adjacent to State waters or otherwise alter the physical, chemical, or biological properties of State waters, except as authorized pursuant to a NPDES permit.

6.5 Exclusions.

(a) The following discharges do not require a NPDES permit:

(1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility or when secured to a storage facility or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or State waters for the purpose of mineral or oil exploration or development;

(2) Discharges of dredged or fill material that are regulated under Section 404 of the Act;

(3) The introduction of sewage, industrial wastes or other pollutants into treatment works, except as provided for by Section 62.1-44.18:2 of the Law;

(4) Water, gas, or other material which is injected into a well to facilitate production of oil or gas derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State and if the Board determines that such injection or disposal will not result in the degradation of ground or surface water resources; and

(5) Any introduction of pollutants from agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to discharges from concentrated aquatic animal production facilities as defined in Section 6.62; and, discharges from silvicultural point sources as defined in Section 6.64.

(b) Nothing herein shall affect the authority of the Board to require certification under any applicable provisions of the Law or Act.

SUBPART B – NPDES PERMIT APPLICATION AND ISSUANCE

6.10. Application for NPDES Permits.

(a) Application shall be made by any owner in the manner and form prescribed by the Board, prior to the issuance of any NPDES permit, except as provided for under Section 6.5.

(b) Owners currently discharging who have:

(1) Existing permits shall submit a new application under paragraph (c) of this section where facility expansions, production increases, or process modifications will:

(i) Result in significantly new or substantially increased discharges of pollutants or a significant change in the nature of the discharge of pollutants, or

(ii) Violate the terms and conditions of the existing permit;

(2) Expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board.

(c) Any owner proposing a new discharge or new source shall submit an application for a NPDES permit at least 30 days prior to commencing erection, construction, or expansion or employment of new processes at any facility. Within that 30-day period, the Board may prohibit such commencement until the NPDES permit is issued. In no case, however, shall any discharge from said facilities commence prior to the issuance of a NPDES permit.

(d) Any application for a NPDES permit to discharge any pollutant, including sewage, industrial wastes, or other wastes, to State waters shall be accompanied by plans, specifications, maps, and such other relevant information as may be required.

(e) The Board may require the submission of additional information after a NPDES application has been filed, and may suspend processing of any application until such time as the owner has supplied missing or deficient information and the Board considers the application complete. Further, where the owner becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Board, he shall promptly submit such facts or information.

6.11 Identity of Signatories to NPDES Forms.

(a) All permit applications shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

(b) All other forms or requests for information required by the Board shall be signed by a person designated in paragraph (a) or a duly authorized representative or agent of such person (either an individual or position), if:

(1) The representative so authorized is responsible for the overall operation of the facility from which the discharge originates, e.g., a plant manager, superintendent or person of equivalent responsibility; and

(2) The authorization is made in writing by the person designated under paragraph (a) and submitted to the Board.

(c) In addition to signatories required in (b) above, any DMR submitted to the Board by a permittee or his authorized representative shall also be signed by the operator of the treatment works.

(d) Any changes in the written authorization submitted to the Board under paragraph (b) which occur after the issuance of a permit shall be reported to the Board by submitting a copy of a new written authorization which meets the requirements of paragraph (b)(1) and (2) above prior to or together with any forms or other information required by the Board which are to be signed by said authorized representative.

(e) Any person signing any document under paragraph (a), (b), or (c) shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and com-

plete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

6.12 Tentative Determinations and Draft Permit Formulation.

The Board shall prepare tentative determinations with respect to a NPDES application in advance of public notice of the proposed issuance or denial of a NPDES permit. Such tentative determinations shall be incorporated into a draft NPDES permit, and shall include at least the following:

(a) A proposed determination to issue or deny a NPDES permit for the discharge described in the NPDES application;

(b) If the determination proposed is to issue the NPDES permit, the following additional tentative determinations will be made:

(1) All conditions, limitations, or requirements, specified in Section 6.14;

(2) Proposed effluent limitations identified pursuant to Sections 6.15 and 6.16 of this Regulation, for those pollutants proposed to be limited;

(3) All compliance schedules required by Section 6.17; and

(4) All monitoring requirements required by Section 6.40.

(c) If the determination proposed is to deny the application, the Board shall so advise the owner of said determination and the requirements, if any, necessary to modify that determination. The owner may withdraw his application prior to Board action on the denial. If the application is not withdrawn and conditions necessary for modification of the tentative determination have been satisfied, the Board shall provide notice and opportunity for a public hearing prior to formal action on the application.

(d) The Board may formulate a draft permit without having received an application from an owner.

6.13 Prohibitions.

No permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable regulations or requirements of the Law or the Act;

(b) For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into State waters;

(c) For any discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;

(d) For any discharge to which the EPA objects in writing;

(e) For any discharge that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy established by the Board pursuant to the Law, except that such permits may be issued to any treatment works operating prior to the adoption of such plan until that treatment works conforms with the area-wide or basin-wide water quality control and waste management plan;

(f) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Prior to the promulgation of the guidelines under Section 403(c) of the Act, unless the Board determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under Section 403(c) of the Act, where insufficient information exists to make a reasonable judgement as to whether the discharge complies with any such guidelines;

(g) For a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will cause or contribute to the violation of water quality standards; or

(h) When the imposition of conditions on any discharge will not require compliance with the applicable water quality laws and regulations of all affected states.

6.14 Conditions Applicable to All Permits.

In addition to the requirements of Sections 6.15, 6.16, and 6.17, the terms and conditions of each NPDES permit issued by the Board shall require the following:

(a) That all discharges authorized by the NPDES permit shall be made in accordance with the terms and conditions of the permit;

(b) That expansions, production increases, or process modifications, that will result in new or increased discharge(s) of pollutants, must be reported promptly to the Board by submission of a new NPDES application, or, if such discharge(s) does not violate effluent limitations specified in the NPDES permit, by submission to the Board of notice of such new or increased discharge(s) of pollutants;

(c) That the discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(d) That the permit may be amended or revoked in accordance with procedures pursuant to Sections 62.1-44.15(5) and 62.1-44.25 of the Law, in whole or in part, during its term, for cause as provided in Subpart E;

(e) That the permittee shall allow any authorized State or Federal representative, upon the presentation of his credentials:

(1) To enter upon the permittee's premises on which the establishment, treatment works, or discharge(s) is located or in which any records are required to be kept under terms and conditions of the permit;

(2) To have access to and copy at reasonable times any records required to be kept under terms and conditions of the permit;

(3) To inspect at reasonable times any monitoring equipment or method required in the permit;

(4) To inspect at reasonable times any collection, treatment, pollution management, or discharge facilities required under the permit; and/or,

(5) To sample at reasonable times any discharge for the purposes of assuring permit compliance or otherwise authorized by the Law and the Act;

(f) That, if the permit is for a discharge from any treatment works, the permittee shall promptly provide notice to the Board of the following:

(1) Any new introduction of pollutants into such treatment works from an establishment, treatment works, or discharge(s) which would be a new source, as defined in these regulations, if such source were discharging pollutants to State waters;

(2) Any new introduction of any pollutant(s) into such treatment works, which introduction represents a significant increase in the discharge of pollutant(s) to the treatment works or may interfere with, pass through, or otherwise be incompatible with such works, from an establishment, treatment works, or discharge(s) which would be subject to Sections 6.15, 6.16, and 6.17, if such establishment, treatment works, or discharge(s) were discharging pollutants to State waters; and,

(3) Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, or discharge(s) that was introducing pollutants into such treatment works at the time of issuance of the permit.

Such notice shall include information on:

(i) The characteristics and quantity of effluent to be introduced into such treatment works;

(ii) Any anticipated impact of such change in the quantity or characteristics of effluent to be discharged from such treatment works; and,

(iii) Any additional information that may be required by the Board.

(g) That any permittee who knows or has reason to believe that any activity or change in conditions has occurred or will occur which might constitute cause for modification or revocation and reissuance under Subpart E must report his plans, or such information, to the Board so that the Board can decide whether action to modify or revoke and reissue a permit under Subpart E will be required. The Board may then require submission of a new application. Submission of such application does not relieve the discharger of the duty to comply with the existing permit until it is modified or reissued;

(h) That the permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement;

(i) That the permittee shall at all times maintain in good working order and operate as efficiently as possible all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures;

(j)(1) That if, for any reason, the permittee does not comply with any maximum daily or average weekly discharge limitations or standards specified in the permit,

the permittee shall submit to the Board with the DMR in accordance with the requirements of Section 6.42 at least the following information:

(i) A description of the discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(iii) Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge;

(2)(i) That in the case of any discharge subject to any applicable toxic pollutant effluent standard under Section 307(a) of the Act, the information required in paragraph (1) regarding a violation of such standard shall be provided immediately, and as quickly as possible upon discovery. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph; and

(ii) That in the case of other discharges which could constitute a threat to human health, welfare, or the environment, the Board may require that the information required in paragraph (1) be provided immediately, and as quickly as possible upon discovery. Where the Board requires immediate notification, and the information is provided orally, a written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph;

(3) That pollutants for which the permittee must report violations immediately pursuant to paragraphs (j)(2)(i) and (ii) shall be listed as such in the permit;

(k) That the permittee shall take all reasonable steps to minimize any adverse impact to State waters resulting from noncompliance with the permit; and

(l) That the permittee, in order to maintain compliance with its permit, shall control production and all discharges as necessary upon reduction, loss, or failure of the treatment facility until the treatment facility is restored or an alternative method of treatment is provided.

(m) **Bypass.**

(1) **Definitions.**

(i) *"Bypass"* means the intentional diversion of wastes from any portion of a treatment facility.

(ii) *"Severe property damage"* means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) **Conditions necessary for bypass.** Bypass is prohibited unless the following four conditions are met:

(i) Bypass is unavoidable to prevent loss of human life, personal injury or severe property damage;

(ii) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, plant shutdown or maintenance during normal periods of equipment down-time;

(iii) The permittee submits notice of an unanticipated bypass to the Board immediately and as quickly as possible upon discovery of the bypass (if this information is provided orally, a written submission must be provided within five days). Where the permittee knows or should have known in advance of the need for a bypass, this prior notification shall be submitted for approval to the Board, if possible, at least ten days before the date of the bypass; and

(iv) The bypass is allowed under conditions determined to be necessary by the Board to minimize any adverse effects. The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible.

(3) **Prohibition of bypass.** The Board may prohibit bypass in consideration of the adverse effect of the proposed bypass or where the proposed bypass does not meet the conditions set forth in paragraphs (m)(2)(i) and (ii).

(n) **Upset.**

(1) **Definition.** *"Upset"* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. The basis

for specific effluent limitations can be found in the fact sheet, as provided for in Section 6.18. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) **Effect of an upset.** An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (n)(3) are met.

(3) **Conditions necessary for a demonstration of upset.** A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed and authenticated, contemporaneous operating logs, or by other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;

(iii) The permittee submitted all information required to the Board in Section 6.14(j)(1) within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days); and

(iv) The permittee took any measures necessary to minimize any adverse impact to State waters.

(4) **Burden of proof.** The permittee shall have the burden of proving an upset in any case where an upset is claimed as a defense.

6.15 Application of Effluent Standards and Limitations, Water Quality Standards, and Other Requirements.

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Law and the Act and any regulations promulgated under the Law and the Act.

Permits shall require compliance with the following as applicable:

(a) Effluent limitations and standards under Sections 301, 302, 303, 304, 307, 318, and 405 of the Act, or established by the Board, including any interim final limitations and standards;

(b) Standards of performance for new sources under Section 306 of the Act or established by the Board, including any promulgated interim final effluent limitations and standards;

(c) Guidelines promulgated by the EPA pursuant to Section 403 of the Act or established by the Board;

(d) Any more stringent limitation, including those necessary to meet water quality standards, treatment requirements, or schedules of compliance, established by the Board pursuant to the Law, or required to implement all applicable water quality standards established pursuant to the Act or required by any other Federal law or regulation;

(e) Any more stringent requirement necessary for compliance with any area-wide or basin-wide water quality control and waste management plan or policy established pursuant to the Law;

(f) Prior to the promulgation by the EPA of applicable effluent standards and limitations pursuant to Sections 301, 302, 306, 307 of the Act, such conditions as the Board determines are necessary to carry out the provisions of the Act and the Law;

(g) Limitations established under paragraphs (a), (b), (d), (e), and (f) of this section to control pollutants meeting the criteria listed in paragraph (g)(1) of this section. Limitations will be established in accordance with paragraph (g)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under Section 6.18.

(1) Limitations must control all toxic pollutants which:

(i) The Board determines are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or,

(ii) The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (g)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or,

(ii) Limitations on other pollutants which, in the Board's judgment, will provide treatment of the pollutants under paragraph (g)(1) of this section.

(h) If the NPDES permit is for the discharge of pollutant(s) into State waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants;

(i) Best management practices to control or abate the discharge of pollutants where:

(1) Authorized under Section 304(e) of the Act for the control of toxic and hazardous pollutants from ancillary industrial activities;

(2) Numeric effluent limitations are inappropriate, inapplicable, or infeasible; or

(3) The practices are reasonably necessary, in the Board's opinion, to achieve effluent limitations and standards, including water quality standards, or otherwise to carry out the purposes of the Act and the Law;

(j) Requirements governing the disposal of residues from treatment facilities in accordance with applicable regulations;

(k) Where a permit is renewed or reissued, interim limitations, standards, or conditions which are at least as stringent as the final limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Subpart E). Where effluent limitations were imposed under Section 402(a)(1) of the Act in a previously issued permit and these limitations are more stringent than those required under the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(1) The discharger has installed the treatment facilities contemplated by the discharger in connection with the issuance of the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent guidelines); or

(2) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (Section 301(b)(2)(E) of the Act);

(l) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired;

(m) With respect to any point source otherwise subject to the foregoing limitations, standards, prohibitions, schedules, and/or requirements, whenever the owner of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Board that any effluent limitations proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is, or is to be made, the Board may impose an alternative effluent limitation which controls the thermal component of the discharge from such source (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water. Notwithstanding any other provision of these regulations, any point source of a discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which as modified meets effluent limitations established under these regulations and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten-year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of Section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

(n) In any case where a NPDES permit issued by the Board contains the effluent standards and limitations described in paragraphs (a) and (b) above, the Board will state its finding that the discharge authorized by the permit will not violate applicable water

quality standards and will prepare a written statement setting forth the basis for such finding. Whenever a NPDES permit issued by the Board contains any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation will be prepared for all pollutants identified by EPA under Section 304(a)(2) of the Act as suitable for maximum daily load calculation to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

6.16 Calculation and Specification of Effluent Limitations and Standards.

(a) (1) All permits shall impose final, and where necessary, interim or interim final effluent limitations, standards and prohibitions under Sections 6.14 and 6.15 for each outfall or discharge point of the permitted facility, except as otherwise provided under Section 6.15(i)(2) and Section 6.16(h).

(2) Except in the case of sewage treatment works, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years. For new sources or new dischargers, actual production shall be estimated using projected production.

(3) In the case of sewage treatment works, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(b) All interim and final permit effluent limitations, standards, or prohibitions established under Sections 6.14 and 6.15 for a metal shall be expressed in terms of the total metal (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

(1) The promulgated effluent limitation and standard under the Act specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Act.

(c) For continuous discharges all interim and final permit effluent limitations, standards, and prohibitions established under Sections 6.14 and 6.15, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations for all dischargers other than sewage treatment works, and as average weekly and average monthly discharge limitations for sewage treatment works.

For the purposes of this part:

(1) A *"continuous discharge"* means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

(2) The *"maximum daily discharge"* is the highest total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to paragraph (d), the highest average concentration or other measurement of the pollutant specified during the calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation may not be violated during any calendar day.

(3) The *"average monthly discharge"* is the total mass, and concentration in the case of sewage treatment works, of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation may not be violated during any calendar month.

(4) The *"average weekly discharge"* is the total mass and concentration of all daily sewage treatment works discharges during any calendar week on which daily discharges are sampled and/or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation may not be violated during any calendar week.

(d) Paragraph (c) is not applicable:

(1) For pH, temperature, radiation, or other pollutants which cannot be appropriately expressed by mass; or

(2) Where applicable promulgated effluent guideline limitations, standards, or prohibitions are expressed in other terms than mass, e.g., as concentration levels.

(3) If, in establishing permit limitations on a case-by-case basis, limitations

expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(e) Except as provided in paragraph (f), effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(f) (1) Upon request of the permittee, effluent limitations or standards imposed in a permit will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the permittee's intake water, if the permittee demonstrates that his intake water is drawn from the same body of water into which the discharge is made and if:

(i) (A) The applicable effluent limitations and standards specifically provide that they shall be applied on a net basis; or

(B) The permittee demonstrates that pollutants present in the intake water will not be substantially removed by the treatment systems operated by the permittee; and

(ii) (A) The permit contains conditions requiring the permittee to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments.

(B) The permittee shall notify the Board if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under Subpart E.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the permittee. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the permittee. In addition, effluent limitations or standards shall not be adjusted when the pollutants in the intake water vary physically, chemically or biologically from the pollutants limited by the permit. Nor shall effluent limitations or standards be adjusted when the permittee significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same. Nor shall effluent limitations or standards be adjusted for pollutants present in the intake water that have been discharged to that water by the permittee.

(g) Discharges which are not continuous, as defined in paragraph (c)(1), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency;

(2) Total mass;

(3) Maximum rate of discharge of pollutants during the discharge; and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

(h) Where imposition of permit effluent limitations or standards at the point of discharge is impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to their mixing with other waste streams or cooling water streams. In such instances the monitoring required by Subpart D shall also be applied to the internal waste streams.

6.17 Schedules of Compliance.

(a) Permits shall contain schedules of compliance requiring the permittee to take specific steps where necessary to achieve expeditious compliance with applicable standards and limitations and other requirements. Schedules of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline.

(b) If any permit allows a time for achieving final compliance which exceeds one year from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement.

(1) In no event shall more than one year elapse between dates specified for interim requirements.

(2) If the time necessary for completion of any interim requirements (such as the construction of a treatment facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates not more than

one year apart for the submission of reports of progress toward completion of the interim requirements.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a treatment works rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in the Act under the following circumstances:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(i) The permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(ii) The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

(i) The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with paragraph (c)(3)(iii) of this section, (i.e., a milestone event for commencement of construction of control equipment); and

(ii) A subsequent schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline; and

(iii) A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

(iv) A requirement that after the permittee has made a decision pursuant to paragraph (c)(3)(i) of this section, it shall so notify the Board and shall:

(A) Follow the schedule required by paragraph (c)(3)(ii) of this section if the decision is to terminate its discharge; or

(B) Follow the schedule required by paragraph (c)(3)(iii) of this section if the decision is not to terminate its discharge.

(d) The Board may, upon request of the permittee and subject to the provisions of Subpart E, modify a schedule of compliance in an issued permit if the Board determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control or remedy) exists for such modification under Section 6.50. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline.

(e) New sources, new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into State waters do not qualify for compliance schedules under this section and are subject to Section 6.65(b)(4).

(f) Within 14 days following each interim date, and the final date of compliance, the permittee shall provide the Board with written notice of the permittee's compliance or non-compliance with the interim or final requirement.

6.18 Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit for a major discharger, as defined in the Memorandum of Agreement between the State and EPA, any draft permit which incorporates a variance, general permits under Section 6.66, and every draft permit which the Board finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in setting the terms of the draft permit. The Board shall send this fact sheet to the owner and to any other person on request.

(b) The fact sheet shall include:

(1) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based;

(2) Any calculations or other necessary explanation of the derivation of

specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under Section 6.15 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed:

(3) Where appropriate, a sketch or detailed description of the location of the discharge described in the application;

(4) A quantitative description of the discharge described in the application;

(5) Reasons requested variances or modifications do or do not appear justified;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under Section 6.30 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision;

(7) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(i) Limitations to control toxic pollutants under Section 6.15(g);

(ii) Limitations on internal wastestreams under Section 6.16(h); or

(iii) Limitations on indicator pollutants under Section 6.15(g); and

(8) Name and telephone number of a person who can provide additional information.

6.19 Permit Issuance; Effect of Permit.

(a) The receipt of a complete application by the Board initiates the permit issuance process.

(b) Following the permit issuance process the Board may approve or disapprove the application for a permit. If the application is disapproved, the Board shall notify the owner as to what measures, if any, the owner may take to secure approval.

(c) Compliance with a permit during its term constitutes compliance with the Law and the Act except for any standard imposed under Section 307 of the Act for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in Subpart E.

(d) The issuance of a permit does not:

(1) Convey any property rights of any sort, or any exclusive privileges;

(2) Authorize, or relieve the permittee from liability for, any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations; or

(3) Preempt, or relieve the permittee from, any duty to obtain any required State or local approval for the activity from which the discharge results.

6.20 Duration of Permits, Continuation of Expiring Permits, and Transferability of Permits.

(a) **Duration of Permits.** All permits shall be issued for fixed terms not to exceed five years. Permits of less than five years duration may be issued in appropriate circumstances (see paragraph (c)(2)). Permits may be modified, revoked and reissued, or terminated as specified in Subpart E. Except for the continuation provisions of paragraph (b) for expiring permits, the term of a permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

(b) **Continuation of Expiring Permits.**

(1) The terms and conditions of an expired permit are automatically continued pending issuance of a new or reissued permit if:

(i) The permittee has submitted a timely and sufficient application for a new or reissued permit under Section 6.52; and

(ii) The Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(2) Permits continued under paragraph (b)(1) remain fully effective and enforceable against the discharger.

(c) **Transferability of Permits.**

(1) A permit may be transferred to another person by a permittee if:

(i) The permittee notifies the Board, in writing, at least 60 days prior to the proposed transfer;

(ii) A written agreement signed by all parties to the transfer, containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on), is submitted to the Board; and

(iii) The Board within 30 days does not notify the current permittee and the new permittee of its intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

(2) Such a transferred permit shall, as of the date of transfer, be as fully effective as if it had been issued directly to the new permittee.

SUBPART C— PUBLIC COMMENT AND HEARINGS

6.30 Public Notice of Permit Application.

(a) Every complete application for a NPDES permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the county, city or town in which the discharge is located. Notice shall be mailed to any person or group upon request. The Board will maintain a mailing list of persons and groups who will receive copies of notices for all NPDES applications. The Board will add the name of any person or group to that list upon written request.

(b) The Board shall provide a period of not less than 30 days following the date of the initial public notice during which time interested persons may submit their written views on the tentative determinations made with respect to the NPDES application. All written comments submitted during the 30-day comment period will be retained by the Board and considered in the formulation of its final determinations with respect to the NPDES application.

(c) The contents of public notice of any application for a NPDES permit shall include the following:

(1) Name and address of the owner;

(2) Name of State waters to which the discharge(s) is made, type of discharge, and a short description of the location of each discharge to State waters indicating whether such discharge is a new or an existing discharge;

(3) When the permittee has filed a request pursuant to Section 316(a) of the Act:

(i) A statement that the thermal component of the discharge is subject to effluent limitations under Sections 301 or 306 of the Act and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under Section 301 or 306; and

(ii) A statement that a Section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under Section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request;

(4) A statement of the tentative determination to issue or deny a NPDES permit for the discharge(s) described in the NPDES application;

(5) A statement of the 30-day comment period required by paragraph (b) to include a statement of procedures to request a hearing or the date of the public hearing if the Board has determined to hold such hearing; and

(6) Address and phone number of the State Water Control Board office at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to Section 6.12 above, request a copy of the fact sheet described in Section 6.18 and inspect and/or arrange to receive copies of NPDES applications, forms and related documents.

(d) Public notice mailed to those identified in paragraph (a) shall contain the information required under paragraph (c) and the following:

(1) A brief description of the owner's activities or operations that result in the discharge described in the application, and a statement whether the application per-

tains to a new or existing discharge; and

(2) A brief description of the comment procedures required by Section 6.33.

(e) Notice of the formulation of a draft general NPDES permit and the issuance of a final general NPDES permit under Section 6.66 shall be in accordance with the requirements of paragraphs (a), (b), (c), and (d) above, except that the public notice for general NPDES permits shall also include a brief description of the types of activities or operations to be covered by the general NPDES permit.

6.31 Notice to Other Government Agencies.

The Board will notify other appropriate government agencies of each complete application for a NPDES permit and will provide such agencies an opportunity to submit their written views and recommendations.

(a) At the time of issuance of public notice pursuant to Section 6.30, a fact sheet will be transmitted to any other State whose waters may be affected by the issuance of a NPDES permit, and, upon written request, a copy of the NPDES application and a copy of the proposed permit prepared pursuant to Section 6.12 will be provided. Each affected State will be afforded an opportunity to submit written recommendations within 30 days to the Board which the Board may incorporate into the permit, if issued. If the Board does not incorporate such written recommendations received, it will provide to the affected state or states, and to the EPA, a written explanation of its reasons for not incorporating the written recommendation.

(b) At the time of public notice, pursuant to Section 6.30, any interstate agency, which has water quality control authority over waters which may be affected by the issuance of a permit, will be provided a copy of each complete application for a NPDES permit, and will be afforded an opportunity to submit its written recommendations within 30 days.

(c) At the time of issuance of public notice pursuant to Section 6.30, a fact sheet will be transmitted to the appropriate District Engineer of the Army Corps of Engineers with respect to any NPDES application for discharge(s) into State waters.

(d) Copies of public notice and fact sheets with respect to applications for NPDES permits, and, upon written request, copies of the application and draft permit, will be mailed to appropriate Federal, State and local agencies, and such agencies will be provided an opportunity to respond, comment, and request a public hearing pursuant to Section 6.33.

6.32 Public Access to Information.

All information pertaining to permit issuance, reissuance, modification or revocation, including permit applications and attachments thereto, effluent data, comments on permit application, and draft permits and fact sheets, shall be available to the public. The Board shall not at any time disclose to any person other than appropriate officials of EPA pursuant to the requirements of the Act any secret formulae, secret processes, or secret methods, properly identified and denoted as such, other than effluent data used by any owner or under that owner's direction. Such trade secrets transmitted by the Board to EPA shall be subject to appropriate Federal regulations governing confidentiality of such information.

6.33 Public Comments and Hearings.

(a) A comment period of at least 30 days following the initial date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised pursuant to the Board's Procedural Rule No. 1, or its successor. All comments shall be considered by the Board in preparing the final permit and shall be responded to as provided in Section 6.35.

(b) In any case, including cases where there is significant public interest relevant to the proposed application, the Board may hold a public hearing on a draft permit or permits. Public notice of that hearing shall be given as specified in Section 6.34. Nothing in this paragraph shall relieve the Board of the requirement to hold a hearing where a hearing is required by applicable law or regulation.

(c) Any hearing convened pursuant to this section will be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of

permit applications may be considered at any such hearing.

(d) Any owner aggrieved by any action of the Board taken without a formal hearing may demand in writing a formal hearing pursuant to Section 62.1-44.25 of the Law.

(e) Proceedings at, and the decision from, the public hearing will be governed by the Board's Procedural Rule No. 1 or its successor.

6.34 Public Notice of Hearing.

(a) Public Notice of any hearing held pursuant to Section 6.33 shall be circulated as follows:

(1) Notice shall be published at least once in a newspaper of general circulation in the county or city where the discharge is to occur;

(2) Notice of the hearing shall be sent to all persons and government agencies which received a copy of the notice of the NPDES application.

(b) Notice shall be effected pursuant to sub-paragraphs (1) and (2) above at least 30 days in advance of the hearing.

(c) The content of public notice of any hearing held pursuant to Section 6.33 shall include at least the following:

(1) Name and address of each owner whose application will be considered at the hearing and a brief description of each owner's activities or operations which result in the discharge;

(2) Name of the State waters to which each discharge is made, and a short description of the location and type of each discharge to the State waters;

(3) A brief reference to the public notice issued for the NPDES application, including identification number and date of issuance unless the public notice includes the hearing notice;

(4) Information regarding the time and location for the hearing;

(5) The purpose of the hearing;

(6) A concise statement of the issues raised by the persons requesting the hearing;

(7) Address of the State Water Control Board office at which interested persons may obtain further information, request a copy of the draft NPDES permit prepared pursuant to Section 6.12, request a copy of the fact sheet prepared pursuant to Section 6.18, and inspect and/or arrange for receipt of copies of NPDES forms and related documents; and

(8) A brief reference to the rules and procedures to be followed at the hearing.

6.35 Responses to Comments.

(a) If the District Engineer of the Corps of Engineers advises the Board in writing during the 30-day public comment period that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the owner so notified. If the District Engineer advises the Board that imposing specified conditions upon the permittee is necessary to avoid any substantial impairment of anchorage or navigation, then the Board shall include the specified conditions in the permit. Review or appeal of a denial of a permit under this section or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this regulation.

(b) If during the 30-day public comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any State or other Federal agency with jurisdiction over fish, wildlife, or public health advises the Board in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial risk to public health, impairment of fish, shellfish, or wildlife resources, the Board may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Law or the Act.

(c) The Board may consult with one or more of the agencies referred to in this section before preparing a draft permit and may reflect their views in the fact sheet or the draft permit.

(d) The Board shall ensure that all comments on any draft permit have been responded to, indicating which provisions of the draft permit have been changed in the final permit, and the reason for the change, or, if the requested change is not made, the reason for denying the change. Any and all responses shall be available to the public.

SUBPART D – PERMIT COMPLIANCE

6.40 Monitoring.

(a) To assure compliance with permit terms and conditions, all permittees shall monitor as specified in the permit:

(1) The amount, concentration, or other measurement specified in Section 6.16 for each pollutant specified in the permit;

(2) The volume of effluent discharged from each point source; and

(3) As otherwise specifically required in the permit, e.g., as required under Section 6.16.

(b) For purposes of paragraph (a), the Board shall specify the following monitoring requirements in the permit:

(1) Requirements concerning proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate);

(2) Monitoring frequency, type, and intervals sufficient to yield continuing data representative of the volume of effluent flow and the quality and/or quantity of pollutants discharged. Variable effluent flows and pollutant quantities shall be required to be monitored at more frequent intervals than relatively constant effluent flows and pollutant quantities; and

(3) Test procedures for the analysis of pollutants meeting the requirements of regulations issued by EPA pursuant to the Act.

6.41 Recording of Monitoring Activities and Results.

The terms and conditions of any NPDES permit that require monitoring of the authorized discharge shall include the following recording requirements:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his NPDES permit;

(b) Any records of monitoring activities and results shall include at least the following for all samples:

(1) The date, place, and time of sampling or measurements;

(2) Who performed the sampling or measurements;

(3) The dates analyses were performed;

(4) Who performed the analyses;

(5) The analytical techniques/methods used; and

(6) The results of such analyses; and

(c) The permittee shall be required to maintain for a minimum of 3 years any records of monitoring activities and results, including all original strip chart recordings for continuous monitoring and instrumentation, calibration, and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee, or upon request of the Board or EPA.

6.42 Reporting of Monitoring Results and Compliance by Permittees.

(a) Periodic reporting shall be required by the terms and conditions of every NPDES permit issued by the Board. The Board, after giving reasonable notification to the permittee, may require more frequent reporting than that contained in the permit. Reports shall contain monitoring results obtained by the permittee pursuant to the monitoring requirements in the NPDES permit, and shall be submitted to the Board using the DMR.

(b) If the permittee monitors its discharge for any pollutant more frequently than required by the permit, using approved analytical methods (Section 6.40(b)(3)), the results of this monitoring shall be reported in the DMR. For purposes of this paragraph, *"approved analytical methods"* are those test procedures for the analysis of pollutants which conform to EPA promulgated regulations or are specified in the permit.

(c) If the permittee monitors his discharge for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods (Section 6.40(b)(3)), the results of this monitoring shall be reported in the DMR unless the Board approves an alternate reporting procedure. For purposes of this paragraph, *"approved analytical methods"* are those test procedures for the analysis of pollutants which conform to EPA promulgated regulations.

(d) Within 14 days after each interim or final permit compliance schedule date, the permittee shall provide the Board with written notice of the permittee's compliance or noncompliance with the interim or final requirements.

6.43 Duty to Provide Information.

The permittee shall furnish to the Board within a reasonable time, any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Board, upon request, copies of records required to be kept by the permittee.

6.44 Toxics Reporting and Notification Levels.

(a) In addition to the reporting requirements under Section 6.42, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Board as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following *"notification levels:"*

(i) One hundred micrograms per liter (100 µg/l);

(ii) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

(iv) The level established by the Board in accordance with paragraph (b) of this section; and

(2) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

(b) The Board may include in a permit a *"notification level"* which exceeds the notification level of paragraph (a)(1)(i), (ii), or (iii) of this section, upon a petition from the permittee or on the Board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

6.45 Commercial Laboratory Reporting.

(a) For the purposes of this section only, *"commercial laboratory"* means any person, not an employee of the permittee, who provides a permittee with services for performing monitoring activities on the permittee's discharge for the purpose of evaluating and reporting compliance or noncompliance with the terms and conditions of a NPDES permit.

(b) If the permittee utilizes commercial laboratory services to comply with the monitoring requirements of the permit and Section 6.40, the permittee shall secure a contract with said commercial laboratory which shall provide:

(1) That the commercial laboratory shall permit any authorized State or Federal representative, upon the presentation of his credentials:

(i) To enter upon the commercial laboratory's premises in which any of the permittee's records are kept for the purposes of inspecting the permittee's records;

(ii) To have access to and copy at reasonable times any records belonging to the permittee;

(iii) To inspect at reasonable times any monitoring/analytical equipment or method required of the permittee; and

(iv) To conduct comparative sampling for the purposes of assuring the permittee's compliance or as otherwise authorized by the Law and the Act;

(2) That copies of all records dealing with any monitoring activities conducted by the commercial laboratory for the permittee be available at the permittee's treatment facilities. Said records shall include the information required by Section 6.41(b); and

(3) That the commercial laboratory shall maintain an original record, at the treatment works, of all monitoring activities performed.

(c) Upon notification by the Board, through the submittal of appropriate data, that the commercial laboratory utilized by the permittee is not ensuring compliance with

Section 6.40 and the terms required by Section 6.40 contained in the permit, the permittee shall take whatever measures the Board determines necessary to ensure such compliance.

6.46 Noncompliance Reporting.

The Board will transmit to EPA a list of failures or refusals of permittees to comply with interim or final requirements, or to notify the Board of compliance or non-compliance with each interim or final requirement of the permit. Such list will be available to the public for inspection.

SUBPART E—PERMIT MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION

6.50 General.

(a) Permits shall be modified, revoked and reissued, or terminated only as authorized in this subpart.

(b) In order to have filed a timely application for the purposes of Section 6.20(b)(1), any permittee with an expiring permit shall submit an application for reissuance to the Board at least 180 days before the expiration date of the permit, unless permission for a later date has been granted by the Board.

6.51 Modification, Revocation and Reissuance, and Termination.

(a) An issued permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause as specified in this section.

(b) Permit modifications shall not be used to extend the term of a permit beyond 5 years from the original date of issuance.

(c) Modification, revocation and reissuance, or termination of an issued permit may be initiated by the Board under applicable provisions of this regulation. Any permittee may request the Board to modify, revoke and reissue, or terminate an issued permit.

(d) Causes for modification, revocation and reissuance, or termination include the following:

(1) Violation of any term or condition of the permit;

(2) Failure of the permittee to disclose fully all relevant facts in the application or during the permit issuance process or the permittee's misrepresentation of any relevant facts at any time;

(3) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under Section 307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.);

(4) Information indicating that the permitted discharge poses a threat to human health or the environment; or

(5) A change in ownership or control of a source which has a permit, where required by the Board in accordance with Section 6.20(c).

(e) In addition to the provisions of paragraph (d) of this section, causes for modification, or revocation and reissuance, but not termination, of a permit include the following:

(1) Material and substantial alterations or additions to the permittee's operation which were not covered in the effective permit (e.g., production changes, relocation or combination of discharge points, changes in the nature of mix of products produced), provided that such alterations do not constitute total replacement of the process or production equipment causing the discharge which converts it into a new source;

(2) The existence of a factor or factors which, if properly and timely brought to the attenton of the Board, would have justified the application of limitations or other requirements different from those required by applicable standards or limitations;

(3) Revision, withdrawal, or modification of water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent limitations guidelines), but only when:

(i) The permit term or condition requested to be modified or revoked was based on promulgated effluent limitations guidelines or State or EPA approved or promulgated water quality standards;

(ii) EPA has revised, withdrawn, or modified that portion of the ef-

fluent limitations guidelines on which the permit term or condition was based; or EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

(iii) A request for modification, or revocation and reissuance, is filed in accordance with Section 6.52 within ninety (90) days after Federal Register notice of:

(A) Revision, withdrawal, or modification of that portion of the effluent limitations guidelines; or

(B) EPA approval of State action regarding a water quality standard;

(4) Judicial remand of EPA promulgated effluent limitations guidelines, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;

(5) Any modification, or revocation and reissuance of permits specifically authorized by the Act, e.g., Sections 301(c), 301(g), 301(h), 301(i), 301(k) or 316(a);

(6) As necessary under Sections 6.14(h), 6.17(c) and (e), and 6.73 of this regulation;

(7) Failure to notify a State whose waters may be affected by the discharge, as required by Section 402(b)(3) of the Act;

(8) Establishment of *"notification level"* as provided in Section 6.44(a)(1); or

(9) Modification of a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

(f) The following permit modifications shall not require public notice and opportunity for hearing under Subpart C unless they would render the applicable standards and limitations in the permit less stringent, or unless contested by the permittee:

(1) Correction of typographical errors;

(2) A change requiring more frequent monitoring or reporting by the permittee;

(3) A change in an interim compliance date, but not beyond 120 days and not where the change would interfere with the attainment of a final compliance date;

(4) A change in ownership or control of a source which has a permit where no other change in the permit is necessary and where transfer is accomplished in accordance with Section 6.20(c); or

(5) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(g) Permit termination shall not require public notice and opportunity for a hearing under Subpart C where such permit termination is mutually agreed to by the permittee and the Board.

6.52 Requests for Modification, Revocation and Reissuance, or Termination.

(a) If a permittee believes that a modification, revocation or reissuance, or termination is justified under the standards of Section 6.51, he may request a modification, revocation and reissuance, or termination from the Board in writing. The request shall set forth all facts or reasons known to the permittee which may be relevant to a decision on the modification request.

(b) If the Board agrees that the modification or revocation and reissuance request appears to meet the requirements of Section 6.51, the Board shall formulate a draft permit under Section 6.12(b) incorporating the changes. If additional information is needed to prepare a draft permit, the Board may request it under Section 6.10(e) or in appropriate cases may require the submission of a complete new permit application under Section 6.10(a). When a request for a modification under this section is granted and a new draft permit is formulated, only those terms dependent on the request will be reopened. All other aspects of the permit will remain in force until the expiration of the permit. If the permit is revoked and reissued, the draft permit is subject to the same procedures as if the permit had expired and was being reissued. During the revocation and reissuance, the permittee shall comply with all conditions of the existing permit until a new permit is issued.

(c) If the Board decides that the modification request does not appear to meet the requirements of Section 6.51, the Board shall reply in writing to the owner briefly setting forth the reasons for that decision.

SUBPART F – SPECIAL NPDES PROGRAMS

6.60 General.

The following sections describe NPDES program coverage for certain categories of point source discharges.

6.61 Disposal of Pollutants into Other Treatment Works or by Land Application.

(a) Where part of an owner's process wastewater is not being discharged directly into State waters or the contiguous zone because it is discharged or disposed of into another treatment works or by land application thereby reducing the flow or level of pollutants being discharged directly into State waters, applicable effluent limitations and standards for the discharge in the permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the State, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards; or

(2) In all cases other than those described in paragraph (1), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into State waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more stringent if dischargers to treatment works or by land application change the character or treatability of the pollutants being discharged to receiving waters.

(b) Paragraph (a) shall not apply where promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged, but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for land application or disposal into treatment works.

(c) Paragraph (a) does not alter a permittee's obligation to meet any more stringent requirements established under Sections 6.14 and 6.15.

6.62 Concentrated Aquatic Animal Production Facilities.

(a) Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) **Definitions.**

(1) *"Concentrated aquatic animal production facility"* means a hatchery, fish farm, or other facility which contains, grows, or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(A) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(B) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(A) Closed ponds which discharge only during periods of excess runoff; or

(B) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(2) *"Cold water aquatic animals"* include, but are not limited to, the Salmonidae family of fish, e.g., trout and salmon.

(3) *"Warm water aquatic animals"* include, but are not limited to, the Ictaluridae, Centrarchidae, and Cyprinidae families of fish, e.g., respectively catfish, sunfish, and minnows.

(c) **Case-by-case designation of concentrated aquatic animal production facilities.** Any warm or cold water aquatic animal production facility not otherwise falling within the definitions provided in paragraph (b) may be designated as a concentrated aquatic animal production facility where the facility is determined by the Board to be a signifi-

cant contributor of pollution to State waters. In making this designation, the Board shall consider the following factors:

(1) The location and quality of the receiving waters;

(2) The holding, feeding, and production capacities of the facility;

(3) The quantity and nature of the pollutants reaching State waters; and

(4) Other such factors relating to the significance of the pollution problem sought to be regulated.

A permit application shall not be required from an aquatic animal production facility designated under this paragraph (c) until there has been an on-site inspection of the facility and a designation of the facility for regulation under the NPDES permit program.

6.63 Separate Storm Sewers.

(a) Separate storm sewers, as defined in this section, are point sources subject to the NPDES permit program. Separate storm sewers may be covered either under individual NPDES permits or under the General NPDES Permit Program (see Section 6.66).

(b) **Definition.**

(1) *"Separate storm sewer"* means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

(i) Located in an urbanized area as designated by the Bureau of Census according to applicable criteria; or

(ii) Not located in an urbanized area but designated as a significant contributor of pollution under paragraph (c).

(2) *"Separate storm sewer"* does not include any conveyance which discharges process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into State waters or into separate storm sewers. Such discharges are subject to the general provision of this regulation.

(c) **Case-by-case designation of separate storm sewers.** The Board may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

(1) A water quality management plan under Section 208 of the Act, which contains requirements applicable to such point sources is approved; or

(2) A storm sewer is determined by the Board to be a significant contributor of pollution to State waters. In making this determination, the following factors shall be considered:

(i) The location of the discharge with respect to State waters;

(ii) The size of the discharge;

(iii) The quantity and nature of pollutants reaching State waters; and

(iv) Other such factors relating to the significance of the pollution problems sought to be regulated.

6.64 Silvicultural Activities.

(a) Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) **Definitions.**

(1) *"Silvicultural point source"* means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into State waters.

(2) *"Rock crushing and gravel washing facilities"* means facilities which process crushed and broken stone, gravel and riprap.

(3) *"Log sorting and log storage facilities"* means facilities whose discharges result from the holding of unprocessed wood, i.e., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

6.65 New Sources and New Dischargers.

(a) **Definitions.**

(1) *"New discharger"* and *"new source"* are defined in Section 6.3(40) and (41);

(2) *"Source"* means any building, structure, facility, installation or establishment from which there is or may be a discharge of pollutants;

(3) *"Existing source"* means any source which is not a new source or a new discharger;

(4) *"Site"* means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(5) *"Facilities or equipment"* means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) **Effect of compliance with new source performance standards.**

(1) Except as provided in paragraph (b)(2), any new discharge on which construction commenced after October 18, 1972, or any new source, which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under Section 301(b)(2) of the Act for the shortest of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of Section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(2) The protection from more stringent standards of performance afforded by paragraph (b)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions that are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under Section 307(a) of the Act; and

(ii) Additional permit conditions controlling pollutants listed as toxic under Section 307(a) of the Act or as hazardous substances under Section 311 of the Act and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where a NPDES permit issued to a source enjoying a "protection period" under paragraph (b)(1) will expire on or after the expiration of the protection period, such permit shall require the owner of the source to be in compliance with the requirements of Section 301 of the Act and any other applicable requirements of the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into State waters shall install and have in operating condition, and shall "start-up," all pollution control equipment required to meet the terms and conditions of its permit before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner must meet all permit terms and conditions.

(5) After the effective date of new source performance standards it shall be unlawful for any owner of any new source to operate such source in violation of those standards applicable to such source.

6.66 General NPDES Permit Program.

(a) **Definitions.**

(1) The term *"separate storm sewer"* is defined in Section 6.63(b)(1).

(2) The term *"general NPDES permit"* means an authorization to discharge under the terms of this section.

(b) **Coverage.** The Board may issue a general NPDES permit in accordance with the following:

(1) **Area.** The general NPDES permit shall be written to cover a category of discharges described in the permit under paragraph (b)(2) of this section, except those covered by individual NPDES permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

(i) Designated planning areas under Sections 208 and 303 of the Act;

(ii) Sewer districts or sewer authorities;

(iii) City, county, or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as designated by the Bureau of the Census; or

(vii) Any other appropriate division or combination of boundaries.

(2) **Sources.** The general NPDES permit shall be written to regulate, within the area described in paragraph (b)(1) of this section, either:

(i) Separate storm sewers; or

(ii) A category of point sources other than separate storm sewers if the sources all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes;

(C) Require the same effluent limitations or operating conditions;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Board, are more appropriately controlled under a general NPDES permit than under individual permits.

(c) **Administration.**

(1) General NPDES permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Subpart E.

(2) **Requiring an individual permit.**

(i) The Board may require any person authorized by a general NPDES permit to apply for and obtain an individual NPDES permit. Interested persons may petition the Board to take action under this subparagraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharge(s) is a significant contributor of pollution as determined by the factors set forth at Section 6.63(c)(2);

(B) The discharger is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(D) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(E) A water quality management plan containing requirements applicable to such point sources is approved; or

(F) The requirements of paragraph (b) of this section are not met.

(ii) Any owner authorized by a general NPDES permit may request to be excluded from the coverage of the general NPDES permit by applying for an individual NPDES permit. The owner shall submit an application under Section 6.10, with reasons supporting the request, to the Board no later than 30 days after notice in accordance with Section 6.30. The request shall be granted by issuing an individual NPDES permit if the reasons cited by the owner are adequate to support the request.

(iii) When an individual NPDES permit is issued to an owner otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

(iv) A source excluded from a general NPDES permit solely because it already has an individual NPDES permit may request that the individual NPDES permit be revoked, and that it be covered by the general NPDES permit. Upon revocation of the individual NPDES permit, the general permit shall apply to the source.

SUBPART G – PRETREATMENT AND INDUSTRIAL USER CONTROL PROGRAM

6.70 Scope and Purpose.

This subpart establishes the responsibilities of the Board to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in POTWs or which may contaminate POTW residues.

6.71 Definitions.

For the purposes of this subpart only:

(a) The term *"Approved POTW Pretreatment Program"* or *"Program"* or *"POTW Pretreatment Program"* means a program administered by a POTW which has been approved by the Board in accordance with this subpart.

(b) The term *"Industrial User"* means a source of Indirect Discharge which does not constitute a "discharge."

(c) The term *"National Pretreatment Standard"* or *"Pretreatment Standard"* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) and (c) of the Act, which applies to Industrial Users.

(d) For the purposes of this subpart only, *"owner"*, as defined at Section 6.3(44), shall include an Industrial User as identified and controlled by the requirements of this subpart.

(e) The term *"Pretreatment"* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means.

(f) The term *"Pretreatment Requirement"* means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

6.72 POTW Program Requirements.

(a) Any POTW shall require any Industrial Users of such POTW to comply with all requirements of Sections 307 and 308 of the Act. As a means of ensuring such compliance, the Board may require that the permittee institute such Industrial User controls as necessary to ensure that the Industrial Users comply with any effluent standards, effluent prohibitions, and Pretreatment Standards, and may require submission by the Industrial Users of periodic reports to the permittee and the Board, to ensure full compliance with such prohibitions and standards.

(b) As set forth in Pretreatment regulations promulgated by EPA and as determined by the Board, affected POTWs shall develop and submit for approval by the Board a POTW Pretreatment Program. Such Pretreatment Program shall require Industrial Users to comply with any Pretreatment Standards and/or requirements and shall include provisions necessary to carry out the requirements of EPA-promulgated Pretreatment regulations.

6.73 Board Program Requirements.

(a) In order to ensure POTW and Industrial User compliance with any Pretreatment regulations, effluent standards, and/or effluent prohibitions, the Board shall have the authority to:

(1) Incorporate POTW Pretreatment Program conditions into permits issued to POTWs; require compliance by POTWs with these incorporated permit conditions; and require compliance by Industrial Users with Pretreatment Standards;

(2) Ensure continuing compliance by POTWs with Pretreatment conditions through review of monitoring reports submitted to the Board by the POTW and ensure continuing compliance by Industrial Users with Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to the Board by the Industrial Users in accordance with Subpart D;

(3) Carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with Pretreatment conditions incorporated into the POTW Permit; and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards;

(4) Approve and deny requests for approval of POTW Pretreatment Programs submitted by a POTW to the Board;

(5) Deny and recommend approval of (but not approve) requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in appropriate EPA-promulgated regulations; and

(6) Approve and deny requests for authority to modify categorical Pretreatment Standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in appropriate EPA-promulgated regulations.

SUBPART H – ENFORCEMENT

6.80 Enforcement.

(a) The Board may enforce the provisions of these regulations by:

(1) Issuing Directives in accordance with Section 62.1-44.15(8)(a)(iv) of the Law;

(2) Issuing Special Orders in accordance with Section 62.1-44.15(8)(a) of the Law;

(3) Issuing Emergency Special Orders in accordance with Section 62.1-44.15(8)(b) of the Law;

(4) Compelling through injunction, mandamus or other appropriate remedy as contained in Section 62.1-44.23 of the Law;

(5) Seeking civil penalties under Section 62.1-44.32 of the Law; or

(6) Bringing actions under the citizens suit provisions of the Act (33 USC Section 1365).

(b) The Board encourages citizen participation in all its activities, including enforcement. In particular:

(1) The Board will investigate and provide a written response to all signed, written complaints from citizens;

(2) The Board will not oppose intervention of any civil or administrative action when such intervention is authorized by statute or Supreme Court rule; and,

(3) The Board will publish public notice in a newspaper of general circulation in the county, city, or town in which the discharge is located, or at the State Capital, at least 30 days prior to the final settlement of any civil action or the issuance of any Consent Special Order. A Consent Special Order is an order issued without a hearing and with the written consent of the affected owner. For the purposes of this regulation, an Emergency Special Order is not a Consent Special Order. This notice will identify the owner, specify the enforcement action to be taken, and provide the address of the Board's office where information on the proposed settlement or Order can be obtained. The Board will consider all comments received during the 30-day period.

SUBPART I – MISCELLANEOUS

6.90 Board Membership.

(a) In accordance with Section 62.1-44.9 of the Law, no officer, employee, or representative of any NPDES permit holder or of any industry, municipal corporation, county, or other political subdivision which may become a NPDES permit holder shall be appointed to the Board.

(b) The Board shall not employ, or continue in employment, any individual who has or shares authority to approve NPDES permit applications or portions thereof, who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from any NPDES permit holder, or any applicant for a NPDES permit.

(1) For the purpose of this section the term *"significant portion of his income"* shall mean 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement.

(2) For the purpose of this section the term *"NPDES permit holders or applicants for a NPDES permit"* shall not include any department or agency of the Commonwealth of Virginia.

(3) For the purpose of this section the term *"income"* includes retirement benefits, consultant fees, and stock dividends.

(4) For the purpose of this section income is not received *"directly or indirectly from permit holders or applicants for a permit"* where it is derived from mutual-fund payments or from other diversified investments, over which the recipient does not know the identity of the primary sources of income.

6.91 Control of Disposal of Pollutants into Wells.

(a) No right to dispose of pollutants into wells shall exist, except as authorized pursuant to a NPDES permit issued by the Board.

(b) Whenever an applicant for a NPDES permit proposes to dispose of pollutants into well(s), the Board shall prohibit the proposed disposal, or specify terms and conditions in the NPDES permit which shall control the proposed disposal in order to prevent the pollution and protect all beneficial uses of ground and surface water resources and protect the public health and welfare.

(c) Any NPDES permit issued for the disposal of pollutants into wells shall be issued in accordance with these regulations.

6.92 Separability.

If any provision of these regulations, or the application of any provision of these regulations to any person or circumstances, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these regulations, shall not be affected thereby.

6.93 Delegation of Authority.

The Executive Secretary, or in his absence a designee acting for him, may perform any act of the Board provided under this Regulation, except as limited by Section 62.1-44.14 of the Law.

Subpart J was adopted November 14, 1980, pursuant to Section 62.1-44.15(10) of the Code of Virginia, in Letter Ballot No. 4797, and was effective February 9, 1981. When the amended Regulation No. 6 became effective March 4, 1981. Subpart J was incorporated into the text of Regulation No. 6.

SUBPART J – DELEGATION OF AUTHORITY TO THE DEPARTMENT OF CONSERVATION AND ECONOMIC DEVELOPMENT FOR COAL SURFACE MINING OPERATIONS

6.100 Purpose.

The purpose of this subpart is to delegate to the Department of Conservation and Economic Development (DCED) the authority to issue, reissue, amend and enforce NPDES permits for discharges of wastes other than sewage from Coal Surface Mining Operations as defined in Section 45.1-229 of the Code of Virginia.

6.101 Basis.

This delegation of authority is authorized by Section 45.1-254 of the Code of Virginia.

6.110 Delegation of Authority to Issue, Reissue or Amend, and Revoke Permits.

The Board hereby delegates to the Director of the Department of Conservation and Economic Development or his authorized agents (the "Director") its authority to issue, reissue, amend, and revoke NPDES permits for the discharge of industrial wastes or other wastes from coal surface mining operations. Any NPDES permit issued, reissued, or amended by the Director under this delegation that meets the conditions set forth in Section 6.111 shall be as valid and enforceable as if issued by the Board itself.

6.111 Conditions Upon Delegation.

The delegation of authority of Section 6.110 is conditioned upon compliance with the following:

(a) The Director shall transmit to the Board a copy of each application for a NPDES permit received by, a copy of every draft NPDES permit prepared by, and written notice of every action taken or contemplated to be taken by the Director with respect to such a permit. The Director shall transmit to EPA the information identified in the NPDES Memorandum of Agreement between EPA and the State for each applicant and permittee.

(b) No NPDES permit shall be issued, reissued or amended by the Director if, within 30 days of the date of the transmittal of the complete application and the draft NPDES permit to it, either the Board or EPA objects in writing to the issuance, reissuance or amendment of such permit. Where required, the Board shall stipulate more stringent permit conditions as necessary to maintain applicable water quality standards and provisions of the Law. Each such stipulation shall be accompanied by justifying documentation to DCED. These stipulations shall be binding upon DCED; however, nothing herein shall affect or impair any rights that the applicant may have to a hearing before the Board pursuant to Section 62.1-44.25 of the Law or to judicial review of such decision pursuant to Section 62.1-44.29 of the Law.

(c) Every permit issued, reissued or amended by the Director must conform to the requirements of this regulation, the Act, and all pertinent regulations adopted under the Act; provided, however, that the public notice and hearing requirements of this regulation need not be met if the notice and hearing requirements of the Law, the Act, and the applicable regulations adopted under the Act are met.

6.120 Delegation of Enforcement Authority.

The Board hereby delegates to the Director its authority to enforce NPDES permits issued to coal surface mining operations for the discharge of industrial wastes and other wastes; provided, however, that the Board reserves the right to assert its enforcement authority as provided in Section 45.1-254E and provided further that the Board reserves the right to take emergency enforcement action where the Director has not taken or cannot take effective emergency enforcement action.

APPENDIX III-10

Commonwealth of Virginia State Water Control Board Policy for the Protection of Water Quality in Virginia's Shellfish-Growing Waters

Commonwealth of Virginia
STATE WATER CONTROL BOARD

POLICY FOR THE PROTECTION OF WATER QUALITY IN VIRGINIA'S SHELLFISH-GROWING WATERS

Adopted: March 25, 1980 in Minute 20.

Effective: June 10, 1980.

In recognition of Article XI in the Constitution of Virginia and in accord with the general provisions of the State Water Control Law, the Board hereby establishes the following statements of policy:

SOCIO-ECONOMIC HEARINGS MANAGEMENT:

In the conduct of these hearings, as required by the Board's Water Quality Standards on projects that may result in shellfish condemnations, it will be the Board's policy to request information from appropriate State agencies, i.e., Department of Health, Virginia Marine Resources Commission, and the Virginia Institute of Marine Science, from the Virginia Seafood Council membership and from private owners and others as appropriate.

EVALUATION OF APPLICATIONS:

In the Board's decision-making process on applications for any new industries, sewage treatment plants, housing developments, marinas, dredging, spoil disposal, bulkheading, or any other new or expanded operations that would directly or indirectly cause condemnations of shellfish growing areas, it will be the Board's policy, in giving adequate protection to viable shellfish resources, to include an evaluation of reasonable *potential* as well as *actual* productivity data for the affected areas.

COORDINATION WITH OTHER AGENCIES:

In its continuing efforts of pollution abatement to protect existing water quality and development of new programs as may be necessary for restoration of currently condemned shellfish areas, it will be the policy of the Board to integrate its programs with other State and Federal programs which would also have as their sole or partial objective the continued viability of Virginia's seafood and shellfish resources.

APPENDIX III-11

Commonwealth of Virginia State Water Control Board, Water Quality Standards

WATER QUALITY STANDARDS

ADOPTED PURSUANT TO
SECTION 62.1-44.15(3)
OF THE CODE OF VIRGINIA (1950),
AS AMENDED

COMMONWEALTH OF VIRGINIA

STATE WATER CONTROL BOARD
RICHMOND, VIRGINIA

EFFECTIVE

DECEMBER 12, 1981
(DATE OF MOST RECENT AMENDMENTS)

1. STANDARDS WITH GENERAL, STATEWIDE APPLICATION

General Standard

Because numeric limits cannot reasonably be developed for every possible chemical, physical or biological parameter, the standards include the following General Standard to protect water quality. This narrative statement although written in general terms, is nonetheless a water quality requirement. For example, the Board may use the General Standard as a basis in establishing effluent limits for waste discharges that are necessary to insure protection of aquatic life even though there may be no specific numeric standard applicable in the receiving stream.

Part A of the General Standard sets the tone and requirement for all standards which follow. The language of Part A of the General Standard, although adopted by the Board as a State standard, finds its authority in the State Water Control Law, Section 62.1-44.2.

1.01 General Standard

A. All State waters shall be maintained at such quality as will permit all reasonable, beneficial uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them.

B. All State waters shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with reasonable, beneficial uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life. Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances, substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits, and substances which nourish undesirable or nuisance aquatic plant life. Effluents which tend to raise the temperature of the receiving water will also be controlled.

C. Zones for mixing wastes with receiving waters shall be determined on a case-by-case basis; shall be kept as small as practical; shall not be used for, or considered as, a substitute for minimum treatment technology required by the Federal Water Pollution Control Act and other applicable State and Federal laws; and shall be implemented, to the greatest extent practicable, in accordance with the provisions of subsections A and B hereof. Mixing within these zones shall be as quick as practical and may require the installation and use of devices which insure that waste is mixed with the allocated receiving waters in the smallest practical area. The need for such devices will be determined on a case-by-case basis. The boundaries of these zones of admixture shall also be such as to provide a suitable passageway for fish and other aquatic organisms. In an area where more than one discharge occurs and several mixing zones are close together, these mixing zones shall be so situated that this passageway is continuous.

Anti-degradation

Setting numeric limits for pollutants by establishing water quality standards provides a minimum quality to which all high quality waters can theoretically be lowered unless additional controls are provided. The antidegradation policy prevents such wholesale lowering of all State waters to this "least common denominator of quality" by providing that waters with existing quality higher than the standards will be maintained at that high quality. The policy, however, does give the Board some flexibility in its administration of the standards. The policy is a direct quote from the State Water Control Law, Section 62.1-44.4, and, as such, is not subject to change by the State Water Control Board.

State law provides that any discharger must be required to utilize the necessary degree of waste treatment to maintain high water quality where physically and economically feasible. Present and anticipated use of such waters will be preserved and protected.

1.02 Anti-degradation Policy as contained in Section 62.1-44.4 of the State Water Control Law:

> **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.

Guidelines for Use in Implementing the Anti-degradation Policy

Existing instream beneficial water uses will be maintained and protected, and actions that would interfere with or become injurious to existing uses should not be undertaken.

In considering if a possible change is justifiable to provide necessary economic or social development, the Board will convene a public hearing so that interested persons will have an opportunity to present information.

Upon a finding that such change is justifiable, the change, nevertheless, must not result in violation of those water quality characteristics necessary to attain the national water quality goal of protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. Further, if a change is considered justifiable, it must not result in any significant loss of marketability of fish, shellfish or other marine resources.

Any determinations concerning thermal discharge limitations under Section 316(a) of PL 92-500 will be considered to be in compliance with the anti-degradation policy.

Standards Application; Stream Flow

Ideally stream standards should be maintained at all times. It is, however, generally accepted that to require standards maintenance at all times is unreasonable, and a specific low flow level has been chosen below which standards do not have to be met. This flow, as stated below, is the 7-day, 10-year low flow – or the lowest flow which, on a statistical basis, would occur for a seven consecutive day period once every 10 years.

1.03 Stream Standards will apply whenever flows are equal to, or greater than, the minimum mean 7-consecutive day drought flow with a 10-year return frequency.

Dissolved Oxygen, pH and Temperature Standards

Paragraphs 1.04 through 1.08 contain standards for dissolved oxygen, pH, and temperature.

The presence of dissolved oxygen (DO) in water is essential for aquatic life, and the type of aquatic community is dependent to a large extent on the concentration of dissolved oxygen present. Dissolved oxygen standards are established to insure the growth and propagation of aquatic ecosystems.

Stream pH is also an important factor in aquatic systems. Biological productivity, stream diversity, metal solubility, and toxicity of certain chemicals, as well as important chemical and biological activity, are strongly related to pH. The pH range of 6-8.5 generally provides adequate protection for aquatic life and for recreational use of streams. Some stream pH's however, fall outside this range due to natural conditions. When identified, these streams are assigned a pH standard that more properly reflects natural conditions. (The special standards for pH are contained in the Special Standards Column in the River Basin Section).

The existence and composition of an aquatic community also depends greatly on the temperature characteristics of a body of water. Thus temperature limits are included in water quality standards to protect and maintain a balanced, healthy aquatic community.

An excessive increase in temperature can be harmful by interfering with fish spawning cycles, causing changes in growth and respiration, and causing shifts in the population of an ecosystem as more heat-tolerant species replace heat sensitive ones. Heat-stressed organisms can exhibit decreased resistance to toxic pollutants, and excessive heat can even be lethal. Heat-related winter fish kills can occur when a heated discharge is suddenly stopped. Fish that

have been attracted to the thermal plume are suddenly exposed to the cold ambient temperature and, if the drop is great enough, it can be fatal.

Virginia's standards contain two approaches to temperature. In the first approach, maximum temperatures limits are established for the first six classes of water, specified in Paragraph 1.04 below, which are based on certain geographical areas and specified uses. (For example in Class IV waters – mountain streams – the maximum temperature is 31°C (88°F). The next two paragraphs (1.05 and 1.06) contain temperature standards, applicable to these six classes, for the maximum rise above the natural temperatures and for the maximum hourly temperature change. Although certainly simple to set and enforce, having a set of temperature standards that applies to a broad class of waters (For example to an entire system as complex as any estuary) is not ideal. Such an approach, by itself, cannot guarantee that the aquatic community at any given location is sufficiently protected. On the other hand, because one set of numbers applies to such broad areas and so must be conservative, the requirements can be unnecessarily restrictive in some areas. A second approach, establishing limits on a case-by-case basis, lessens these difficulties.

In this site-specific approach, temperature limits are tailored to a specific location; they are designed to protect the aquatic community actually present by taking into account the hydrologic, geologic and climatic conditions peculiar to the site. Thus they should provide sufficient protection without being unnecessarily restrictive.

To formulate temperature limits for an area, a set of guidelines – or criteria – is needed, and in 1977 the Board, recognizing the value of site-specific temperature standards, adopted the criteria found in paragraph 1.08 to use in setting future temperature limits. The specific limits are developed for one or more important and sensitive species at the site, thus assuring that the entire aquatic community can be protected.

Since developing site-specific temperature standards is complicated and time consuming, the Board has indicated that they should be developed primarily for waters receiving new thermal discharges of one million gallons per day or more. (Unless specifically indicated later in this booklet within the River Basin Section's Special Standards Column [Section 4], site specific standards have not been adopted for a site and the appropriate temperature standards of Paragraphs 1.04, 1.05, 1.06 and 1.07, apply.)

Classification of Waters Within the State: Dissolved Oxygen, pH, Maximum Temperature Standards

All State surface waters are assigned one of the following seven Classes based on geographic location, or type of trout water. The limits set forth in Paragraph 1.04 for the appropriate class are the enforceable water quality standards for the waters unless an exception is made by a special standard. (A listing of the Classes assigned to particular areas can be found in Section 4 – River Basin Section Tables. That Section also indicates in the Special Standards Column if there are any special standards in addition to – or differing from – limits listed below.)

1.04 Standards for DO, pH, and Maximum Temperature

CLASS	DESCRIPTION OF WATERS	DISSOLVED OXYGEN mg/l		pH	MAX. TEMP. °C
		Minimum	Daily average		
I	Open Ocean	5.0	—	6.0-8.5	—
II	Estuarine (Tidal Water-Coastal Zone to Fall Line)	4.0	5.0	6.0-8.5	—
III	Free Flowing Streams (Coastal Zone and Piedmont Zone)	4.0	5.0	6.0-8.5	32
IV	Mountainous Zone	4.0	5.0	6.0-8.5	31
V	Put and Take Lake Trout Waters	5.0	6.0	6.0-8.5	21
VI	Natural Trout Waters	6.0	7.0	6.0-8.5.	20
VII	Swamp Water				**

*This classification recognizes that the natural quality of swamp water may fall outside of the ranges for D.O. and pH set forth above as water quality standards; therefore, on a case-by-case basis, standards for specific swamp waters can be developed that reflect what natural quality is.
**Maximum temperature will be the same as that for Classes I through VI waters as appropriate.

See Section 3.04, page 15 for requirements for analytical procedures.

1.05 Rise above natural temperature

Any rise above natural temperature allowed by the Board shall be determined on a case-by-case basis and should not exceed 3°C except in the case of Class VI waters (natural trout waters) where it shall not exceed 1°C. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

1.06 Maximum hourly temperature change

The maximum hourly temperature change shall not exceed 2°C, except in the case of Class VI waters (Natural trout waters) where it shall not exceed 0.5°C. This standard (limit) is to apply beyond the boundaries of mixing zones and does not apply to temperature changes caused by natural conditions.

1.07 Thermal discharges into lakes and impoundments

In lakes and impoundments receiving thermal discharges, the average temperature of the epilimnion, [surface water layer], in those areas where important organisms are most likely to be affected, shall not be raised more than 3°C above that which existed before the addition of heat of artificial origin. (The permissible increase shall be determined on a case-by-case basis, and in some instances may be less than 3°C). The increase is to be based on the monthly average of the maximum daily temperature. The temperature of releases from these lakes and impoundments shall be consistent with standards established for the receiving waters. Unless a special study shows that a discharge of heated effluent into the hypolimnion (or pumping water from the hypolimnion for discharging back into the same water body) will not produce adverse effects, such practice shall not be approved. Maximum temperatures consistent with the standards established for water immediately above and below the lake or impoundment will be established for these waters.

Site specific temperature standards

The temperature limits set forth in Paragraph 1.04 may be superseded in certain locations by temperature standards developed specifically for that area. (The existence of site specific standards is indicated in the Special Standards Column, otherwise the appropriate temperature limits in paragraphs 1.04, 1.05, 1.06 and 1.07 will apply.) In developing specific temperature standards, the following criteria will be used:

1.08 Criteria for Developing Site Specific Temperature Standards

The temperature standards shall be based on:

1. One limit which consists of a maximum weekly average temperature that:

   a. In the warmer months is determined by adding to the physiological optimum temperature (usually for growth) a factor calculated as one-third of the difference between the ultimate upper incipient lethal temperature and the optimum temperature for the most sensitive important species (and appropriate life stage) that normally is found at that location and time.

   b. In the cooler months is an elevated temperature that would still ensure that important species would survive if the temperature suddenly dropped to the normal ambient temperature, or

   c. during reproduction seasons meets specific site requirements for successful migration, spawning, egg incubation, fry rearing, and other reproductive functions of important species; or

   d. at a specific site is found necessary to preserve normal species diversity or prevent undesirable growths of nuisance organisms.

2. A second limit which is the time-dependent maximum temperature for short exposures.

Baseline thermal conditions should be measured at a site where there is no unnatural thermal addition from any source, which is in reasonable proximity to the thermal discharge (5 miles), and which has similar hydrography to that of the receiving waters at the discharge.

Standards development should be in accordance with *Water Quality Criteria 1972: A Report of the Committee on Water Quality Criteria* and *Quality Criteria for Water*, U. S. Environmental Protection Agency.

Groundwater Standards

With the 1977 amendments to Water Quality Standards, Virginia became one of the first states to adopt standards and criteria to protect and preserve the quality of its groundwater resources.

About one out of every four Virginians depends on groundwaters for drinking water. Also in times of dry weather and low stream flow, many streams are supplied totally by groundwater. Therefore, the Board considers it important to insure that groundwater quality is protected. The standards and criteria adopted by the Board in 1977 consist of limits designed to protect and conserve the natural quality of groundwater and to provide guidance for preventing groundwater pollution (See Paragraph 6.02 for groundwater criteria).

Although differing hydrogeologic conditions can cause state-wide variations in natural groundwater quality, it was found that within certain physiographic provinces of the State relatively uniform and consistent groundwater conditions exist. For each of these areas, chemical and physical analyses of groundwater samples on file at the State Water Control Board were evaluated, and concentrations that were representative of about 90% - 95% of the samples were selected as the standard for each constituent. The numbers selected are therefore representative of the prevalent natural condition of that constituent in any particular province.

The groundwater standards also include an antidegradation policy which is intended to ensure that naturally occurring groundwater quality is not degraded. This policy does provide that in limited cases some changes in natural quality could be allowed. The groundwater standards represent groundwater quality that should be preserved or attained. Natural variations in quality occur because of local hydrogeologic conditions and thus exceptions to statewide standards do occur occasionally throughout the State. Therefore refinement to or variance from groundwater standards can be made where specific data confirm a natural variation.

1.09 Groundwater Standards

Groundwater quality standards will apply statewide and will apply to all groundwater occurring at and below the uppermost seasonal limits of the water table. In order to prevent the entry of pollutants into groundwater occurring in any aquifer, a soil zone or alternate protective measure or device sufficient to preserve and protect present and anticipated uses of groundwater shall be maintained at all times. Zones for mixing wastes with groundwater may be allowed, upon request, but shall be determined on a case-by-case basis and shall be kept as small as possible.

It is recognized that natural groundwater quality varies statewide. Four Physiographic provinces have been determined for application of standards, namely the Coastal Plain, Piedmont and Blue Ridge, Valley and Ridge, and Cumberland Plateau. (See Figure 1, page 11.)

Antidegradation policy for groundwater

If the concentration of any constituent in groundwater is less than the limit set forth by groundwater standards, the natural quality for the constituent shall be maintained; natural quality shall also be maintained for all constituents, including temperature, not set forth in groundwater standards. If the concentration of any constituent in groundwater exceeds the standard for that constituent, no addition of that constituent to the naturally occurring concentration shall be made. Variance to this policy will not be made unless it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development, that the necessary degree of waste treatment cannot be economically or socially justified, and that the present and anticipated uses of such water will be preserved and protected.

GROUNDWATER STANDARDS BY PHYSIOGRAPHIC PROVINCE				
CONSTITUENT	CONCENTRATION			
	Coastal Plain	Piedmont & Blue Ridge	Valley & Ridge	Cumberland Plateau
pH	6.5-9	5.5-8.5	6-9	5-8.5
Ammonia Nitrogen	0.025 mg/l	0.025 mg/l	0.025 mg/l	0.025 mg/l
Nitrite Nitrogen	0.025 mg/l	0.025 mg/l	0.025 mg/l	0.025 mg/l
Nitrate Nitrogen	5 mg/l	5 mg/l	5 mg/l	0.5 mg/l

GROUNDWATER STANDARDS—STATEWIDE		
CONSTITUENT	CONCENTRATION	
Sodium	270	mg/l
Foaming Agents as Methylene blue Active Substances	0.05	mg/l
Petroleum hydrocarbons	1	mg/l
Arsenic	0.05	mg/l
Barium	1.0	mg/l
Cadmium	0.0004	mg/l
Chromium	0.05	mg/l
Copper	1.0	mg/l
Cyanide	0.005	mg/l
Lead	0.05	mg/l
Mercury	0.00005	mg/l
Phenols.	0.001	mg/l
Selenium	0.01	mg/l
Silver	None	
Zinc	0.05	mg/l
Chlorinated Hydrocarbon Insecticides		
Aldrin/Dieldrin	0.003	ug/l
Chlordane	0.01	ug/l
DDT	0.001	ug/l
Endrin	0.004	ug/l
Heptachlor	0.001	ug/l
Heptachlor Epoxide	0.001	ug/l
Kepone	None	
Lindane	0.01	ug/l
Methoxychlor	0.03	ug/l
Mirex	None	
Toxaphene	None	
Chlorophenoxy Herbicides		
2, 4-D	0.1	mg/l
2, 4, 5-TP	0.01	mg/l
Radioactivity		
Gross Beta	1000	pc/l
Radium 226	3	pc/l
Strontium 90	10	pc/l

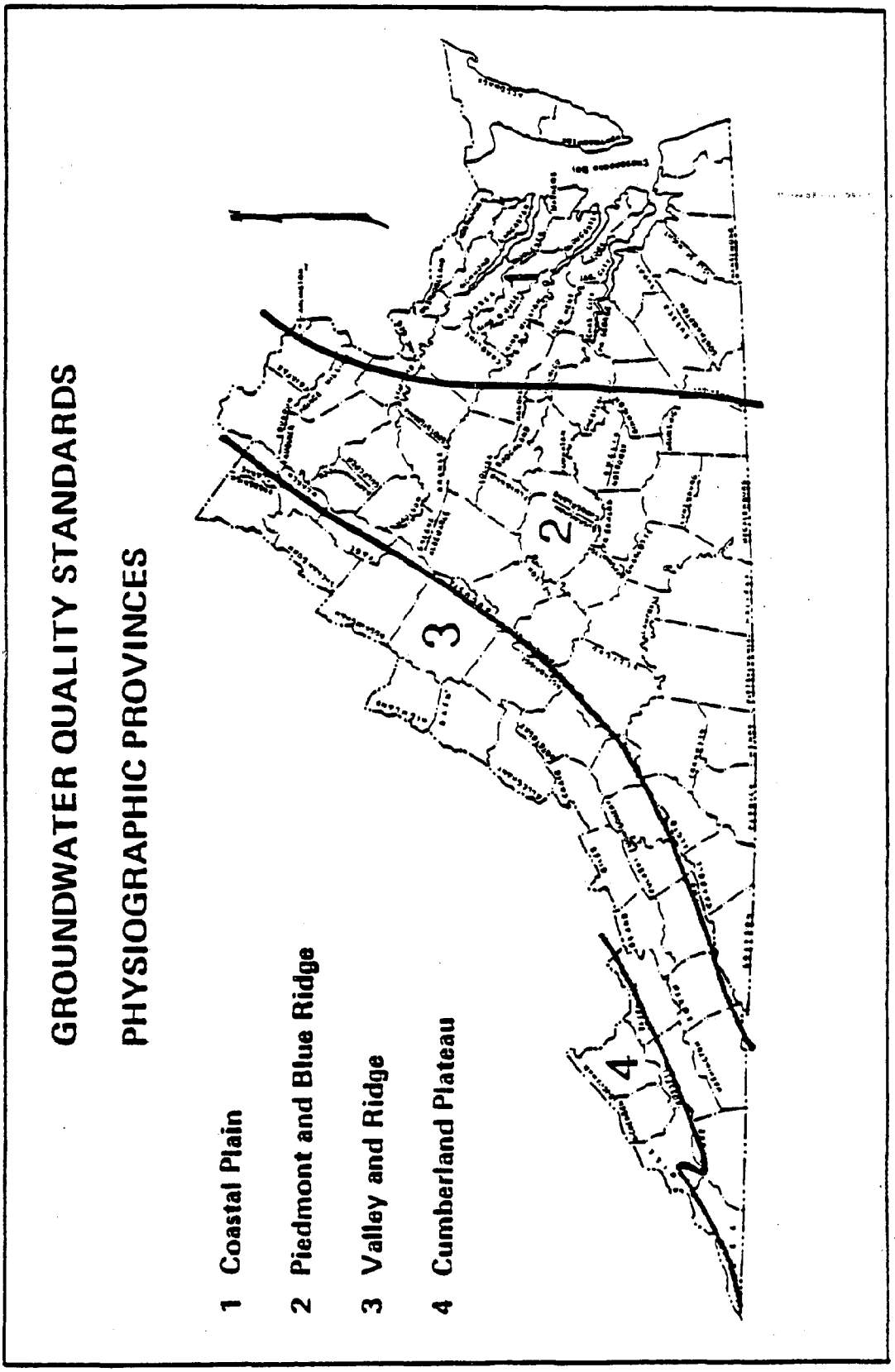

GROUNDWATER QUALITY STANDARDS
PHYSIOGRAPHIC PROVINCES
1 Coastal Plain
2 Piedmont and Blue Ridge
3 Valley and Ridge
4 Cumberland Plateau
1
2
3
4

Figure 1

2. STANDARDS WITH MORE SPECIFIC APPLICATION

Bacterial Standards

Virginia's water quality standards include two fecal coliform bacteria standards – one for shellfish waters and one for all other waters. These "indicator organisms," while not necessarily harmful in themselves, are found in the intestinal tracts of warmblooded animals, including humans, and therefore can be indicative of fecal contamination and the possible presence of pathogenic organisms.

SHELLFISH WATERS

For waters containing leased private or public shellfish beds and waters capable of propagating shellfish, the following standard is established for fecal coliform bacteria. The limit is consistent with requirements of the State Health Department's Bureau of Shellfish Sanitation and the U. S. Food and Drug Administration – the State and Federal agencies, respectively, charged with administering shellfish sanitation programs.

2.01 Fecal Coliform Bacteria – Shellfish Waters

In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, and including those waters on which condemnation or restriction classifications are established by the State Department of Health, the following standard for fecal coliform bacteria will apply:

The median fecal coliform value for a sampling station shall not exceed an MPN of 14 per 100 ml of sample and not more than 10% of samples shall exceed 43 for a 5 tube, 3 dilution test or 49 for a 3 tube, 3 dilution test.

OTHER WATERS

Waters other than shellfish waters are assigned the following coliform bacteria standard which is designed to protect waters for all types of recreation. Before 1977, Virginia's standards contained two such bacteria standards – one of which was intended to protect waters known or thought to be used for "primary contact recreation," e.g. swimming; and a less stringent standard which was intended to protect waters for "secondary contact recreation," e.g. – boating or fishing. In its 1977 amendments to Virginia's Water Quality Standards, the Board adopted the more stringent bacteria standard for primary contact recreation to apply to all surface waters of the State. This action was taken as part of Virginia's commitment to attain by 1983, the national goal of water quality suitable for all types of recreation.

2.02 Fecal Coliform Bacteria – Other Waters

In all surface waters, except those where leased private or public shellfish beds are present, the fecal coliform bacteria shall not exceed a log mean* of 200 fecal coliform bacteria per 100 ml of water with not more than 10 percent of the total samples during any 30-day period exceeding 400 per 100 ml. Evaluation should be determined by either the multiple-tube fermentation for marine water or the membrane filter method for fresh water and should be based upon not less than ten samples taken over not more than a 30-day period.

Water Quality Standards for Surface Public Water Supplies

Although protection of public health and regulation of public drinking water supplies fall primarily within the purview of the State Health Department, the State Water Control Board does have the responsibility to protect the quality of water in streams used as a raw source for drinking water supplies. To this end the Board has adopted

*geometric mean

standards for application to specific drinking water sources. Because some pollutants are not significantly removed by conventional water treatment systems, and to insure protection of the water supply, the stream standards for those pollutants are the same as the limits required for protection of public health in the finished drinking water.

In order to emphasize the need to protect a specific body of water for use as a source for a public water supply, each such area has been designated as a separate section in the River Basin Section Tables of Section 4. The section usually begins at the intake point and usually extends 5 miles upstream. (If a watershed is not significantly larger than 5 miles above the intake the water supply section may include the entire upstream watershed to its headwaters.) This designation as a separate section is primarily an administrative method of pointing out a water supply source and emphasizing the need to protect the stream.

The public water supply standards usually apply only at the raw water intake point. Of course, the upstream water quality must be such that specific limits will be met at the intake point. In cases where the specific numeric limits are adopted to apply for some additional upstream distance to provide further protection for the water source, the section description in the River Basin Section Tables will indicate this fact and point out the additional distance. Lacking such special notation, the public water supply standards apply only at the intake point.

Public Water Supply Standards and Protection of Aquatic Life

The Public Water Supply Standards are designed to protect water quality for human consumption. These limits, however, in some cases may not be sufficient to protect aquatic life. Many aquatic organisms are more sensitive to certain pollutants than humans and would, of course, be under constant exposure to any such pollutant in their environment. Therefore, when the Board considers classifying a body of water as a public water supply, an evaluation of the aquatic community in that area is made to determine if water quality concentration limits must be more stringent for any particular parameter to protect the aquatic community. (The concentrations for those pollutants that are marked with an asterisk (*) are the ones most likely to be too high to protect aquatic life, although adequate to provide protection for human consumption.) This procedure will ensure that any specific numeric limits adopted as enforceable standards for a public water supply will be stringent enough to protect aquatic life.

2.03 Surface Water Standards for Surface Public Water Supplies

In addition to other standards established for the protection of public or municipal water supplies, the following standards will apply at the water intake and, if determined to be appropriate, for a distance upstream, and in the case of the streams influenced by tidal action, downstream also. This distance from the intake is to be determined on a case-by-case basis by the Board considering upstream wastewater volume, receiving stream volume and other appropriate physical, chemical and biological factors. The standards will apply to both the water supply stream and its tributaries within the designated distance. (In case of existing water supplies, the standards will apply at the intake point until further change is made.)

CONSTITUENT	CONCENTRATION (MG/L)
Arsenic	0.05
Barium	1.0
Cadmium*	0.01
Chloride	250
Chromium (Total)	0.05
Copper*	1.0
Foaming agents (measured as methylene blue active substances)	0.5
Iron (soluble)	0.3
Lead	0.05
Manganese (soluble)	0.05
Mercury*	0.002
Nitrate (as N)	10
Phenols	0.001
Selenium*	0.01
Silver*	0.05
Sulfate	250
Total dissolved solids	500
Zinc*	5.0

CONSTITUENT	CONCENTRATION (MG/L)
Chlorinated Hydrocarbon Insecticides:	
Endrin*	0.0002
Lindane*	0.004
Methoxychlor*	0.1
Toxaphene*	0.005
Chlorophenoxy Herbicides:	
2, 4-D	0.1
2, 4, 5-TP (Silvex)	0.01
Radioactivity:	**picocurie/liter**
Combined radium - 226 and radium - 228 -	5
Gross alpha particle activity (including radium - 226 but excluding radon and uranium)	15

*The numeric standards for the chemicals listed in Paragraph 2.03 above are designed to protect public water supplies for human consumption. The limits established for those chemicals marked with an asterisk (*) may not protect aquatic life. Therefore when a request to classify a stream as a public water supply is received, it will be determined if more stringent limits are needed for those chemicals in order to insure protection of aquatic life.

3. PROCEDURAL REQUIREMENTS

This section contains statements and requirements that are a part of the standards adopted by the Board: these requirements are enforceable.

3.01 Variance in Standards

The above standards notwithstanding, as a result of natural conditions, water quality may from time to time vary from established limits.

3.02 Modification, Amendment and Cancellation of Standards

In accordance with the authority granted under Section 62.1-44.15(3)(b) of the State Water Control Law, Chapter 3.1, Title 62.1, Code of Virginia (1950), as amended, the Board reserves the right at any time to modify, amend, or cancel any of the rules, policies, or standards set forth herein; such modification, amendment, or cancellation shall be consistent with requirements of Section 303 of the Federal Water Pollution Control Act, as amended and regulations promulgated thereunder.

3.03 Shellfish Buffer Zones – Public Hearing

Discharges of treated wastes or proposals to otherwise alter the biological, chemical or physical properties of State waters, submitted to the Board for approval, while not contravening established standards for shellfish waters may prevent the direct marketing of shellfish as a result of judgment factors employed by the State Department of Health. When the possibility of such condemnation arises as the result of such proposals, the Board will convene a public hearing to determine the socio-economic effect of the proposal before reaching a decision, unless the appropriate State agencies, (the Bureau of Shellfish Sanitation and/or the Marine Resources Commission) certify that the project would have no effect on the shellfish industry now and in the foreseeable future.

3.04 Analytical Procedures

Analytical testing should be done in accordance with accepted procedures in the appropriate edition of *Standard Methods for the Examination of Water and Wastewater* or other Board/EPA recognized and approved methods.

3.05 Tidal Water Sampling

Samples for determining compliance with standards established for estuarine or open ocean waters will be collected at slack before flood tide or slack before ebb tide.

4. RIVER BASIN SECTION TABLES

A. Section Number and Description Columns

The tables that follow divide the State's surface waters into nine river basins, some with subbasins: Potomac River Basin (Potomac and Shenandoah Subbasins), James River Basin, Rappahannock River Basin, Roanoke River Basin (Roanoke and Yadkin Subbasins), Chowan and Dismal Swamp Basin (Chowan and Albemarle Sound Subbasins), Tennessee and Big Sandy Basins (Big Sandy, Clinch and Holston Subbasins), Chesapeake Bay, Atlantic Ocean and Small Coastal Basins, York River Basin and New River Basin. (See Figure 2, page 17.)

Each basin is further divided into sections. Each section is assigned a Class, represented by Roman numerals I through VII, based on its geographic location or, in the case of trout waters, on its use. Descriptions of these Classes are found in paragraph 1.04, page 7.

B. Classification Column: DO, pH, Temperature Standards

Paragraph 1:04. on page 7 lists Classes I through VII and the water quality standards for dissolved oxygen (DO), pH, and maximum temperature, that apply to each class. (For example, as shown on page 27, Section 1 of the James River Basin is indicated as being Class II waters (estuarine). By referring to paragraph 1.04 the DO, pH, and maximum temperature for this Section can be found along the line following Class II.

C. Special Standards Column

1. Bacteria Standards

All surface waters have a standard for fecal coliform bacteria. The bacteria standard for shellfish waters is set forth in Paragraph 2.01; the standard applying to all other surface waters is found in Paragraph 2.02. The letter *a* in the Special Standards Column next to a River Basin Section indicates that there are shellfish waters somewhere within that section and the bacteria standard for shellfish waters applies to those shellfish waters. (It should be noted that even though the column contains the letter *a* the entire section may not be shellfish waters.)

The bacteria standard in paragraph 2.02 applies to all other surface waters.

2. Natural Variation

In some cases natural water quality does not fall within the limits set by the standards. (For example streams in some areas of the State can naturally exceed the usual pH range of 6 to 8.5.) In these instances the Board may have set a more appropriate standard that reflects natural quality, and this "special limit" is shown in the Special Standards Column.

3. Additional Requirements

In other cases the "basic" water quality parameters of DO, pH, temperature, and bacteria have not been sufficient to protect water quality in certain areas, and effluent limits or treatment requirements have been established for these areas. This fact is also indicated in the Special Standards Column. If the standard was too long to print in its entirety, the column contains only a lower case letter and the standard itself will be found in the Key to Special Standards Section Paragraph 5.01, under this letter.

4. Other Special Standards or Designations

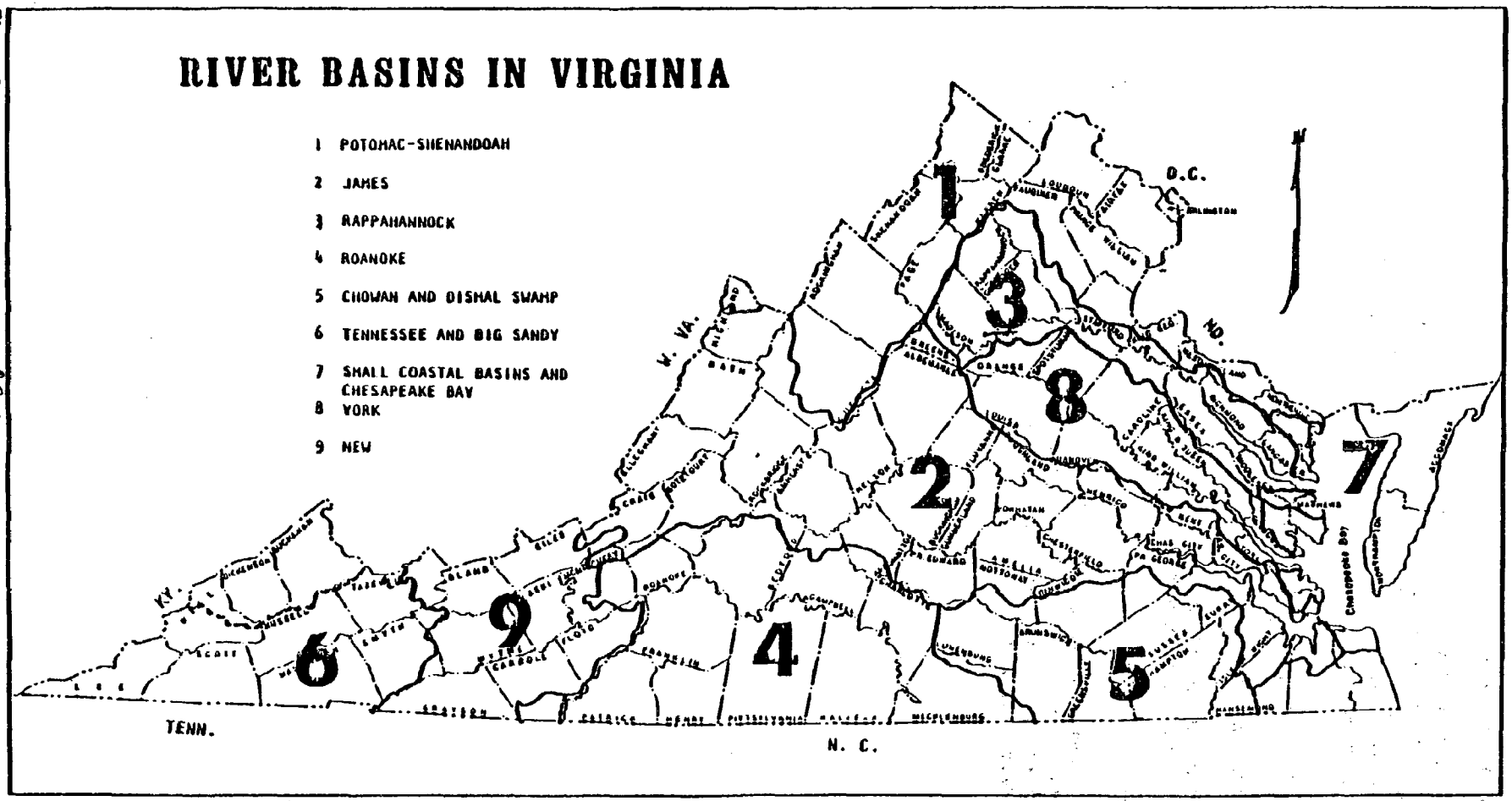
a. Public Water Supplies

The Special Standards Column also indicates sections that are public water supplies with a "PWS" (This designation indicates that additional standards are applicable. (See Section 2.03, page 13.)

b. "Scenic Rivers"

The Special Standards Column also indicates if a section contains a stream that has been designated a scenic river by the General Assembly with an SR- followed by a number. The appropriate waterway can be found listed in the Key to Special Standards Section under Scenic Rivers, Paragraph 5.02, page 74.

Figure 2


RIVER BASINS IN VIRGINIA
1 POTOMAC-SHENANDOAH
2 JAMES
3 RAPPAHANNOCK
4 ROANOKE
5 CHOWAN AND DISMAL SWAMP
6 TENNESSEE AND BIG SANDY
7 SMALL COASTAL BASINS AND CHESAPEAKE BAY
8 YORK
9 NEW
W. VA.
D.C.
MD.
KY.
TENN.
N. C.
Chesapeake Bay

SECTION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	POTOMAC RIVER BASIN		
	Potomac River Subbasin		
1	Tidal tributaries of the Potomac River from Smith Point to Upper Machodoc Creek (Baber Point).	II	a
1a	All free flowing portions of tributaries to the Potomac River from Smith Point to, and including, Potomac Creek, unless otherwise designated.	III	b
1b	Potomac Creek and its tributaries from the proposed Stafford County water supply dam to its headwaters.	III	PWS,b
2	Upper Machodoc Creek and the tidal portions of its tributaries.	II	a,c
2a	Free flowing portions of those streams in Section 2.	III	c
3	Tidal portions of the tributaries to the Potomac River from Upper Machodoc Creek to Marlboro Point.	II	b
4	Tidal portions of tributaries to the Potomac River from Marlboro Point to Brent Point (to include Aquia Creek and its tidal tributaries).	II	b,d
4a	Free flowing portions of tributaries to the Potomac River in Section 4 up to the Aquia Sanitary District water impoundment.	III	b,d
4b	Aquia Creek from the Aquia Sanitary District water impoundment, and other tributaries into the impoundment, upstream to their headwaters.	III	PWS,b,d
5	Tidal portions of tributaries to the Potomac River from Brent Point to Shipping Point, including tidal portions of Chopawamsic Creek and its tidal tributaries.	II	b
5a	Free flowing portions of Chopawamsic Creek and its tributaries to Quantico Marine Base water supply dam.	III	b
5b	Chopawamsic Creek and its tributaries above the Quantico Marine Base water supply dam to their headwaters.	III	PWS,b,e
6	Tidal portions of tributaries to the Potomac River from Shipping Point to Chain Bridge.	II	b,f
7	Free flowing portions of tributaries to the Potomac River from Shipping Point to Chain Bridge, unless otherwise designated.	III	b
7a	Occoquan Creek and its tributaries above Fairfax County Water Authority's water supply impoundment, unless otherwise designated.	III	b,g
7b	The impounded waters of Occoquan River above the water supply dam of the Fairfax County Water Authority to backwater of the impoundment on Bull Run and Occoquan River, and the tributaries of Occoquan River above the dam to a point 5 miles above the dam.	III	PWS,b,e,g
7c	Broad Run and its tributaries above the water supply dam of the City of Manassas upstream to a point 5 miles above the dam.	III	PWS,b,e,g
7d	The impounded waters of Lake Jackson, Broad Run and Cedar Run.	III	PWS,b,e,g
7e	Cedar Run from the Town of Warrenton's raw water intake to its headwaters.	III	PWS,b,g
8	Tributaries to the Potomac River in Virginia between Chain Bridge and the Monacacy River from their confluence with the Potomac upstream 5 miles, to include Goose Creek to the City of Fairfax's raw water intake, unless otherwise designated.	III	PWS,SR-1
8a	Big Spring Creek and its tributaries in Loudoun County, from its confluence with the Potomac River upstream to their headwaters. (The temperature standard for natural trout water may be exceeded in the area above Big Spring and Little Spring at Routes 15 and 740 due to natural conditions).	VI	

SEC-TION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	Potomac River Subbasin (cont.)		
9	Broad Run, Sugarland Run, Difficult Run, Tuscarora Creek, Sycoline Creek and other streams tributary to streams in Section 8 from a point 5 miles above their confluence with the Potomac River to their headwaters, unless otherwise designated.	III	SR-1
9a	All the impounded water of Goose Creek from the City of Fairfax's water supply dam upstream to backwater, and its tributaries above the dam to a point 5 miles above the dam.	III	PWS,a,SR-1
10	Tributaries of the Potomac River from the Monacacy River to the West Virginia-Virginia State line in Loudoun County, from their confluence with the Potomac River upstream to their headwaters, unless otherwise designated.	III	
10a	North Fork Catoctin Creek from Purcellville's raw water intake to its headwaters.	III	PWS
10b	South Fork Catoctin Creek and its tributaries from its confluence with the North Fork Catoctin Creek to its headwaters.	III	SR-2
11	Tributaries of the Potomac River in Frederick and Clarke Counties, Virginia, unless otherwise designated.	IV	pH-6.5-9.5
	Put and Take Trout Waters in Section 11 Back Creek (upper) from Rock Enon 4 miles upstream. Back Creek (lower) from Route 600 to the mouth of Hogue Creek - 2 miles. Clearbrook Run from its confluence with Hot Run 2.1 miles upstream. Hogue Creek from Route 679 upstream 6 miles to the Forks below Route 612. Opequon Creek (in Frederick County) from 24.2 miles above its confluence with the Potomac River 10 miles upstream. Turkey Run (Frederick County) from its confluence with Opequon Creek 3.6 miles upstream.	V	pH-6.5-9.5
	Natural Trout Waters in Section 11 Bear Garden Run from its confluence with Sleepy Creek 3.1 miles upstream. Redbud Run from its confluence with Opequon Creek 4.4 miles upstream.	VI	pH-6.5-9.5
11a	Clearbrook Run and its tributaries from its confluence with Hot Run to their headwaters.	IV	pH-6.5-9.5 h
12	South Branch of the Potomac River and its tributaries, such as Strait Creek, and the North Fork River and its tributaries from the Virginia-West Virginia State line to their headwaters.	IV	pH-6.5-9.5
	Put and Take Trout Waters in Section 12 Frank Run from its confluence with the South Branch Potomac River 0.8 mile upstream. South Branch Potomac River (in Highland County) from 69.2 miles above its confluence with the Potomac River 4.9 miles upstream. Strait Creek (Highland County) from its confluence with the South Branch Potomac River 3.9 miles upstream.	V	pH-6.5-9.5
	Natural Trout Waters in Section 12 Blights Run from its confluence with Laurel Fork (Highland County) 0.6 mile upstream. Buck Run (Highland County) from its confluence with Laurel Fork 1.3 miles upstream. Collins Run from its confluence with Laurel Fork 0.9 mile upstream. Laurel Fork (Highland County) from 1.9 miles above its confluence with the North Fork South Branch Potomac River 15.7 miles upstream. Locust Spring Run from its confluence with Laurel Fork 3.5 miles upstream. Lost Run from its confluence with Laurel Fork 1.5 miles upstream. Mullenax Run from its confluence with Laurel Fork 1 mile upstream. Newman Run from its confluence with Laurel Fork 1 mile upstream. Slabcamp Run from its confluence with Laurel Fork 2.2 miles upstream.	VI	pH-6.5-9.5

SECTION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	JAMES RIVER BASIN (LOWER)		
1	James River and its tidal tributaries from Old Point Comfort - Fort Wool to Barrets Point (Buoy 64), except prohibited or spoil areas, unless otherwise designated.	II	a,i
1a	Free flowing or non-tidal portions of streams in Section 1, unless otherwise designated.	III	i
1b	Eastern Branch of the Elizabeth River and tidal portions of its tributaries from its confluence with the Elizabeth River to the end of tidal waters.	II	a,j,k
1c	Free flowing portions of the Eastern Branch of the Elizabeth River and its tributaries.	III	j,k
1d	Southern Branch of the Elizabeth River from its confluence with the Elizabeth River to the lock at Great Bridge.	II	a
1e	Free flowing portions of the Western Branch of the Elizabeth River and of the Southern Branch of the Elizabeth River from their confluence with the Elizabeth River to the lock at Great Bridge.	III	
1f	Nansemond River and its tributaries from its confluence with the James River to Suffolk (dam at Lake Meade), unless otherwise designated.	II	a,l
1g	Shingle Creek from its confluence with the Nansemond River to its headwaters in the Dismal Swamp.	III	l
1h	Lake Prince, Lake Burnt Mills and Western Branch impoundments for Norfolk raw water supply and Lake Kilby - Cahoon Pond, Lake Meade and Lake Speight impoundments for Portsmouth raw water supply.	III	PWS,e
1i	Free flowing portions of the Pagan River and its free flowing tributaries.	III	
1j	Chisel Run and its tributaries, expect that tributary into which Eastern State Hospital discharges, to their headwaters.	III	i
1k	Skiffes Creek Reservoir (Newport News water impoundment).	III	PWS
	JAMES RIVER BASIN (MIDDLE)		
2	James River and its tidal tributaries from Buoy 64 near Barrets Point upstream to the fall line at Richmond, to include the Chickahominy River and its tidal tributaries from the mouth upstream to Walkers Dam and the Appomattox River and its tidal tributaries from the mouth upstream to the head of tidal waters (approximately at the Route 1/301 Bridge across the Appomattox), unless otherwise designated.	II	
2a	James River from City Point to a point 5 miles above American Tobacco Company's raw water intake and the Appomattox River from its mouth to 5 miles upstream of Virginia-American Water Company's raw water intake.	II	PWS
2b	Free flowing tributaries to Section 2a.	III	PWS
3	Free flowing tributaries of the James River from Buoy 64 to Brandon and free flowing tributaries of the Chickahominy River to Walkers Dam, unless otherwise designated.	III	
3a	Diascund Creek from Newport News' raw water intake dam to its headwaters.	III	PWS
4	Chickahominy River and its tributaries from Walkers Dam to Bottoms Bridge (Route 60 bridge).	III	m
4a	Chickahominy River from Walkers Dam to a point 5 miles upstream.	III	PWS,m

SEC TION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	JAMES RIVER BASIN (MIDDLE) (CONT.)		
5	Chickahominy River and its tributaries, unless otherwise designated, from Bottoms Bridge (Route 60 bridge) to its headwaters.	III	m
5a	Brandy Branch (a tributary to Beaverdam Creek).	III	m
5b	Unnamed tributary to Lickinghole Creek which has its confluence 1.38 miles above the mouth of Lickinghole Creek.	III	m
6	Appomattox River from the head of tidal waters, and free flowing tributaries to the Appomattox River, to their headwaters, unless otherwise designated.	III	SR-6
6a	Swift Creek and its tributaries from Colonial Heights' raw water intake to a point 5 miles upstream.	III	PWS
6b	Swift Creek and its tributaries from the dam at Pocahontas State Park upstream to Chesterfield County's raw water impoundment dam.	III	
6c	Swift Creek and its tributaries from Chesterfield County's raw water impoundment dam to a point 5 miles upsteam.	III	PWS
6d	That portion of Oldtown Creek within the corporate limits of Colonial Heights.	III	
6e	Appomattox River and its tributaries from Appomattox River Water Authority's raw water intake located at the dam at Lake Chesdin to the headwaters of the lake.	III	PWS
6f	Buffalo Creek from Farmville's raw water intake to a point 5 miles upstream.	III	PWS
6g	The Appomattox River and its tributaries from Farmville's raw water intake (approximately 2.5 miles above the Route 15/45 bridge) to a point 5 miles upstream.	III	PWS
6h	Sandy River Reservoir and its tributaries to their headwaters.	III	PWS
7	Free flowing tributaries to the James River from Brandon to the fall line at Richmond, unless otherwise designated.	III	
7a	Falling Creek and its tributaries from Bellwood Defense General Supply Center's raw water intake to a point 5 miles above Chesterfield County's raw water intake.	III	PWS
8	James River and its tributaries from the low water dam above 14th Street Bridge to Richmond's raw water intake at Williams Island Dam.	III	
9	James River and its tributaries, unless otherwise designated, from Richmond's raw water intake at Williams Island Dam to a point 5 miles above Richmond's raw water intake at Bosher Dam.	III	PWS,n
9a	Tuckahoe Creek from its confluence with the James River to its headwaters.	III	PWS,o
10	James River and its tributaries from a point 5 miles above Richmond's raw water intake at Bosher Dam to, and including the Rockfish River, unless otherwise designated.	III	SR-5
	Put and Take Trout Waters in Section 10		
	Ivy Branch 1.5 miles upstream from the church above the junction of Routes 628 and 614.	V	
	Rockfish Creek from its confluence with the South Fork Rockfish River to its headwaters.		

SECTION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	RAPPAHANNOCK RIVER BASIN		
1	Rappahannock River and the tidal portions of its tributaries from Stingray and Windmill Points to Route 1 Alternate Bridge at Fredericksburg.	II	a
1a	Hoskins Creek from the confluence with the Rappahannock River to its tidal headwaters.	II	
2	Free flowing tributaries of the Rappahannock from Stingray and Windmill Points upstream to Blandfield Point, unless otherwise designated.	III	
3	The Rappahannock River from the Route 1 Alternate Bridge at Fredericksburg upstream to its headwaters, unless otherwise designated.	III	q
4	Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated.	III	q
	Put and Take Trout Waters in Section 4 Robinson River from its confluence with the Rapidan River to its headwaters.	V	q
	Natural Trout Waters in Section 4 Berry Hollow from its confluence with the Hughes River to its headwaters. Bolton Branch from 1.7 miles above its confluence with Hittles Mill Stream 2.1 miles upstream. Broad Hollow Run from its confluence with Hazel Run 1.9 miles upstream. Brokenback Hollow from its confluence with the Hughes River to its headwaters. Bush Mountain Stream from its confluence with the Conway River 0.9 mile upstream. Cedar Run (Madison County) from its confluence with the Robinson River to its headwaters. Conway River (Greene County) from the Town of Fletcher to its headwaters. Dark Hollow from its confluence with the Rose River 1 mile upstream. Devils Ditch from its confluence with the Conway River to its headwaters. Entry Run from its confluence with the South River 4 miles upstream. Garth Run from its confluence with the Rapidan River to its headwaters. Hannah Run from its confluence with the Hughes River 2 miles upstream. Hazel River (Rappahannock County) from 38.6 miles above its confluence with the Rappahannock River 6 miles upstream. Hogcamp Branch from its confluence with the Rose River 2.5 miles upstream. Hughes River(Madison County) from Route 231 to its headwaters. Indian Run (Rappahannock County) from 3.4 miles above its confluence with the Jordan River 3.9 miles upstream. Jordan River (Rappahannock County) from 10.9 miles above its confluence with the Rappahannock River 1.8 miles upstream. Kinsey Run from its confluence with the Rapidan River 2.1 miles upstream. Laurel Prong from its confluence with the Rapidan River 1.1 miles upstream. Mill Prong from its confluence with the Rapidan River 1 mile upstream. Negro Run from its confluence with the Robinson River 1.1 miles upstream. North Fork Thornton River from its confluence with the Thornton River to its headwaters. Piney Branch from its confluence with the Thornton River to its headwaters.	VI	q

SECTION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	RAPPAHANNOCK RIVER BASIN (CONT.)		
	Natural Trout Waters in Section 4 (cont.) Piney River (Rappahannock County) from 0.8 mile above its confluence with the North Fork Thornton River 6.4 miles upstream. Pocosin Hollow from its confluence with the Conway River to its headwaters. Ragged Run from 0.6 mile above its confluence with Popham Run 1.9 miles upstream. Rapidan River from Graves Mill (Route 615) to its headwaters. Robinson River (Madison County) from its confluence with the Rose River to its headwaters. Rose River from its confluence with the Robinson River to its headwaters. Rush River (Rappahannock County) from Route 628 (river mile 5.24) to its headwaters. Sams Run from its confluence with the Hazel River 0.8 mile upstream. South River from its confluence with the Rapidan River to its headwaters. Sprucepine Branch from its confluence with Bearwallow Creek 1.7 miles upstream. Staunton River (Madison County) from its confluence with the Rapidan River 3.5 miles upstream. Strother Run from its confluence with the Rose River 2.3 miles upstream. Thornton River (Rappahannock County) from 25.7 miles above its confluence with the Hazel River 2.5 miles upstream. Wilson Run from its confluence with the Staunton River to its headwaters.	VI	q
4a	(deleted)		
4b	The Rappahannock River and its tributaries, to include the VEPCO Canal, from Fredericksburg's raw water intake to a point 5 miles upstream.	III	PWS,q
4c	Motts Run and its tributaries.	III	PWS,q
4d	Horsepen Run and its tributaries.	III	q
4e	Hunting Run and its tributaries.	III	PWS,q
4f	Wilderness Run and its tributaries.	III	q
4g	Deep Run and its tributaries.	III	q
4h	(deleted)		
4i	Mountain Run from Culpeper's raw water intake to its headwaters.	III	PWS,q
4j	White Oak Run from the Town of Madison's raw water intake upstream to its headwaters (Natural Trout water).	VI	PWS,q
4k	Rapidan River from Orange's raw water intake upstream 5 miles.	III	PWS,q
4l	Rapidan River and its tributaries from the Rapidan Service Authority's raw water intake (just upstream of the Route 29 bridge) upstream to a point 5 miles above the intake.	III	PWS,q

SECTION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	CHOWAN AND DISMAL SWAMP BASIN		
	Albemarle Sound Subbasin		
1	Back Bay and its tributaries in the City of Virginia Beach to the Virginia-North Carolina State line and the Northwest River and its tidal tributaries from the Virginia-North Carolina State line to the free flowing portion, and North Landing River and its tidal tributaries from the Virginia-North Carolina State line to the Great Bridge Lock.	II	
1a	The free flowing portions of streams in Section 1 and tributaries of Stumpy Lake.	III	
1b	Stumpy Lake.	III	e
1c	Northwest River and its tributaries from the City of Chesapeake's raw water intake to a point 5 miles upstream and a point 5 miles downstream.	III	PWS
2	Intracoastal Waterway (portions not described in Section 1).	III	
3	Lake Drummond, including feeder ditches, and all interstate tributaries of the Dismal Swamp between Virginia and North Carolina.	III	

SECTION	BASIN AND SECTION DESCRIPTION	CLASS	SPECIAL STANDARDS
	CHOWAN AND DISMAL SWAMP BASIN		
	Chowan River Subbasin		
1	Blackwater River and its tidal tributaries from the Virginia-North Carolina State line to the end of tidal waters at approximately State Route 611 at river mile 20.90; Nottoway River and its tidal tributaries from the Virginia-North Carolina State line to the end of tidal waters at approximately Route 674.	II	
2	Blackwater and Nottoway Rivers from the end of tidal waters to their headwaters and their free-flowing tributaries in Virginia, unless otherwise designated.	III	SR-8
2a	Blackwater River and its tributaries from Norfolk's auxiliary raw water intake near Burdette, Virginia, to a point 5 miles above the raw water intake, to include Corrowaugh Swamp to a point 5 miles above the raw water intake.	III	PWS
2b	Hanzlik Pond Branch from a point one mile below Route 460 to its headwaters.	III	
2c	Nottoway River and its tributaries from Norfolk's auxiliary raw water intake near Courtland, Virginia, to a point 5 miles upstream.	III	PWS
2d	Hatcher Run from the impoundment dam on Lake Jordan to State Route 631.	III	
2e	Nottoway River from Johns Manville's raw water intake near Jarratt, Virginia, to a point 5 miles above the intake.	III	PWS
2f	Nottoway River and its tributaries from Camp Pickett's raw water intake to a point 5 miles above the raw water intake.	III	PWS
2g	Lazaretto Creek and its tributaries from Crewe's raw water intake to a point 5 miles upstream.	III	PWS
2h	Modest Creek and its tributaries from Victoria's raw water intake to their headwaters.	III	PWS
2i	Nottoway River and its tributaries from the Town of Victoria's raw water intake (about 200 feet upstream from State Route 49) to a point 5 miles upstream.	III	PWS
3	Meherrin River and its tributaries in Virginia from the Virginia-North Carolina State line to its headwaters.	III	
3a	Meherrin River and its tributaries from Emporia's water supply dam to a point 5 miles upstream.	III	PWS
3b	Great Creek from Lawrenceville's raw water intake to a point 5 miles upstream.	III	PWS
3c	Meherrin River from Lawrenceville's raw water intake to a point 5 miles upstream.	III	PWS
3d	Flat Rock Creek from Kenbridge's raw water intake upstream to its headwaters.	III	PWS
3e	Meherrin River and its tributaries from South Hill's raw water intake to a point 5 miles upstream.	III	PWS
3f	Couches Creek from a point 1.6 miles downstream from the Industrial Development Authority discharge to its headwaters.	III	t

5. KEY TO SPECIAL STANDARDS AND INFORMATIONAL DESIGNATIONS

5.01 Specific Standards and Requirements

a. Shellfish Waters

In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, including those waters on which condemnation or restriction classifications are established by the State Department of Health, the following standard for fecal coliform bacteria will apply:

The median fecal coliform value for a sampling station shall not exceed an MPN of 14 per 100 ml of sample and not more than 10% of samples shall exceed 43 for a 5 tube, 3 dilution test or 49 for a 3 tube, 3 dilution test.

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Potomac Embayment Standards

The standards of quality, based on a one-month average, for all sewage treatment plant effluents discharging into Potomac River embayments in Virginia from Jones Point (Hunting Creek) to the Route 301 Bridge, and for expansions of existing plants discharging into the non-tidal tributaries of these embayments, are:

			NOTES
1.	Biochemical oxygen demand	Not greater than 3 ppm	A, B
2.	Unoxidized nitrogen	Not greater than 1.0 ppm during the periods April 1 - Oct. 31	B, C
3.	Total phosphorus	Not greater than 0.2 ppm	D
4.	Total nitrogen (when technology is available)	Not greater than 1 ppm	E

Background notes

A. This BOD_5 standard is a factor of three less stringent than that being presently produced at the Lake Tahoe plant which is approximately 1 ppm of BOD_5.

B. A BOD_5 of 3 ppm and 1 ppm of unoxidized nitrogen will result in a UOD of approximately 10 ppm.

C. To achieve this level of unoxidized nitrogen, nitrification can be accomplished by limiting the BOD_5 load on aeration units to 25 pounds per 1000 cubic feet or less and designing the aeration units to maximize the "plug-flow" principle.

D. This phosphorus standard is a factor of two less stringent than that being presently produced at the Lake Tahoe plant which is 0.1 ppm or less of P.

E. For the time being the requirement for total nitrogen removal is waived. However, all plants will have to have facilities to meet this standard as soon as practical after a technically feasible process with year-round reliability is developed and available.

These standards were adopted as the result of a study by the Chesapeake Technical Support Laboratory of the Federal Water Quality Administration (now EPA) which recommended certain maximum effluent concentration limits for ultimate oxygen demand, phosphorus and nitrogen to maintain and improve water quality, and a public hearing held on March 30, 1971. The standards shown above were adopted at the June 14-15, 1971, Board meeting (Minute 42) to apply from Jones Point to Marlboro Point (Aquia Creek). At its June 10-11, 1974, meeting (Minute 4) following a March 28, 1974 hearing, the Board extended the standards to the Route 301 Bridge.

c. Williams and Upper Machodoc Creeks

The following criteria will be applied to proposals for sewage treatment facilities which will discharge effluent to Williams and Upper Machodoc Creek, King George County:

1. **If raw sewage stabilization ponds are proposed, they shall be followed by a 15-day holding pond and chlorination facilities in duplicate;**

2. **If "conventional" sewage treatment facilities are proposed, they shall effect at least 85% removal of BOD and shall be followed by a 15-day holding pond and chlorination facilities in duplicate;**

3. **Chlorination facilities are to be operated continuously during the entire year and chlorine residual of at least 2.0 ppm shall be maintined at all times;**

4. **In sewerage systems where pumping stations are found to be necessary, they shall be designed to prevent the discharge of raw sewage to State waters;**

5. **If, in the opinion of the staff, following consultation with the State Department of Health it is determined that more satisfactory water quality can thereby be maintained in the receiving stream, the holding pond shall be operated to provide for controlled flow discharge.**

The purpose of these criteria was to establish a Board regulation with respect to the discharge of treated effluents to the two watersheds, because of the likelihood of increased development in the area and the need to protect water quality and beneficial water uses, especially shellfish growing. Adoption of the criteria at the May 17-18, 1966, Board meeting (Minute 59) followed a public hearing on May 5, 1965. They were slightly amended in April 1970.

d. Aquia Creek

No proposal resulting in the discharge of treated wastes to Aquia Creek will be approved unless the following is provided.

1. **At least 100 days' storage to allow complete elimination of discharges during the low-flow summer months or**

2. **Other treatment, based on sound engineering concepts (preferably with experimental data to show their feasibility), be provided for nutrient removal prior to discharge.**

The above requirements were initially adopted by the Board at its meeting of June 30-July 1, 1964 (Minute 71) to protect the recreational uses of Aquia Creek. They were based on information received at a public hearing before the Board at its meeting on June 30 and July 1, 1964.

e. Lakes with Thermal Discharges

The following temperature standard will apply to lakes and impoundments receiving thermal discharges.

> **In lakes and impoundments receiving thermal discharges, the average temperature of the epilimnion, in those areas where important organisms are most likely to be affected, shall not be raised more than 3°C above that which existed before the addition of heat of artificial origin. (The permissible increase shall be determined on a case-by-case basis and in some instances may be less than 3°C) The increase is to be based on the monthly average of the maximum daily temperature. The temperature of releases from these lakes and impoundments shall be consistent with standards established for the receiving waters. Unless a special study shows that a discharge of heated effluent into the hypolimnion (or pumping water from the hypolimnion for discharging back into the same water body) will not produce adverse effects, such practice shall not be approved. Maximum temperatures consistent with the standards established for water immediately above and below the lake or impoundment will be established for these waters.**

This thermal standard was incorporated into water quality standards with the 1970 amendments and was subsequently amended in March 1977.

f. Potomac Enforcement Conference - Recommendation 1

On May 8, 1969, conferees to a Potomac Enforcement Conference, covering the 26-mile stretch from Little Falls to Hallowing Point just below Gunston Cove, made 15 recommendations. The following requirments of Recommendation 1 from that conference pertain to Virginia treatment facilities:

Based on the existing points of discharge, waste treatment facilities now discharging to the Potomac River between river mile 106 and river mile 91 (the 15 mile stretch of the river from Chain Bridge downstream to the vicinity of Hog Island) shall be improved to achieve removal of BOD_5, total phosphorus, and total nitrogen so as to limit loadings as follows:

FACILITY	LBS/DAY		
	BOD_5	TOTAL P	TOTAL N
Arlington	1,300	60	650
Alexandria	1,300	60	630
Fairfax Westgate	900	40	445

Additional loading and additional points of discharge will be acceptable only if the resultant water quality will be equal to, or better than, that which results from adherance to the above load limits at the existing points of discharge.

The following treatment plants shall provide 96% BOD_5 removal, 96% phosphorus removal, and 85% total nitrogen removal, so long as they discharge their effluents to tributaries or embayments of the Potomac River: Fairfax County Doque Creek, Little Hunting Creek, and Accotink-Pohick (Lower Potomac) treatment plants; and Fort Belvoir.

NOTE: In accordance with Board action in Minute 13 from its meeting on September 20-21, 1971, discharges which lie within boundaries of the Potomac Enforcement Conference (Little Falls to Hallowing Point) and of the Potomac Embayment Standards (Hunting Creek- Jones Point to the Route 301 Bridge) must comply with the more restrictive provisions of the two.

Prior to the 1972 Amendments to the Federal Water Pollution Control Act, Federal water pollution control agencies convened a conference of all parties involved in order to take enforcement action relative to water pollution abatement. Such an "Enforcement Conference" was held concerning the Potomac River in the Washington, D.C., metropolitan area in the late 1950's and was reconvened in 1968. The area covered by this conference was a 26-mile stretch of the River, from Little Falls to Hallowing Point. Recommendation 1 of the 15 recommendations made by the conferees on May 8, 1969, set allowable daily loads or percent removals for BOD, nitrogen and phosphorus for discharges into the river. The limits were based on a study done by FWPCA's Annapolis laboratory, which determined assimilation capacities of the river in the conference area and the downstream estuary.

g. Occoquan Watershed Policy

At its meeting on July 26, 1971, (Minute 10) the Board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set very stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are an important water supply for Northern Virginia areas. Following a public hearing on November 20, 1980, the Board, at its December 10-12, 1980, meeting, adopted as of February 1, 1981, revisions to this Policy (Minute 20). These revisions became effective March 4, 1981. Copies are available upon request from the State Water Control Board.

h. Chlorides not to exceed 800 mg/l at any time.

i. Powhatan Creek Watershed

The following, from Minute 20 of the proceedings of the Board at its meeting on January 16, 1969, will also apply to the Powhatan Creek Watershed in James City County:

1. All proposals for treated waste discharges to the Powhatan Creek Watershed will in the future be approved only after:

   a. Engineering data have been submitted indicating the capability of the proposed treatment facilities to remove all phosphorus and nitrogen compounds.

   b. Owners with facilities existing at the time of this action will, in a period not to exceed 60 days, submit to the Board engineering reports and pollution abatement schedules indicating the maximum concentrations of phosphorus and nitrogen compounds which they can remove from waste waters prior to discharge. No schedule providing a time period exceeding three years will be approved. Modification or replacement of existing treatment facilities may be necessary.

2. It will entertain from owners in the area a proposal for development of:

   a. A central facility to treat all wastes at a point outside the Watershed, where phosphorus and nitrogen removal will probably not be necessary, or

   b. Treatment facilities inside the Watershed which include complete removal of all phosphorus and nitrogen compounds.

3. If the above plan is accompanied by a firm schedule leading to completion of sewage treatment facilities within a reasonable length of time, and it can be demonstrated that the financing for the facilities is available, the Board will consider allowing interim construction of sewage treatment facilities in the Powhatan Creek Watershed without the requirement of phosphorus and nitrogen compound removal.

These requirements for the Powhatan Creek Watershed were developed to attempt to alleviate the secondary pollution problems due to algae growth developing in the tidal waters of Powhatan Creek which, the Board felt, would in all probability become more intensive with expected population growth and its attendant waste discharges. They were adopted following a public hearing on September 17, 1968.

j. For the Lynnhaven River and Eastern Branch Elizabeth River Watersheds the following applies:

   Objective for Nutrients - The cumulative total of nitrogen as N from all sources in the effluent shall not be greater than 0.5 mg/l at any time; phosphorus as P from all sources in the effluent shall not be greater than 1.0 mg/l at any time.

k. For the Lynnhaven River and Eastern Branch Elizabeth River Watersheds the State Water Control Board has directed and/or ordered the following:

1. That all existing discharges in accordance with j above shall substantially remove the nutrients in their effluents on or before such time as central facilities (The Hampton Roads Sanitation District Commission Chesapeake-Elizabeth System) become available or connect to central facilities, (i.e. The Chesapeake-Elizabeth System).

2. That it will consider approving small discharges to this watershed to facilitate the elimination of potential public health hazards provided central facilities (Chesapeake-Elizabeth System) are not available, and

3. That it will not allow additional significant new discharges to this watershed, which do not provide for nutrient removal facilities in accordance with j above.

In 1961 a water quality survey was made of the Lynnhaven watershed; In 1964, a survey was undertaken on the Eastern Branch of the Elizabeth River resulting in a Board report entitled "An Evaluation of Water Quality

nutrient enrichment.

2. The watersheds have poor flushing characteristics.

3. Nutrients causing water quality problems should be removed from discharges into the watershed or the discharges themselves should be removed.

The wastewater treatment requirements of j and k above attempted to accomplish removal of nutrients from the streams.

l. **Nansemond River Watershed**

The following requirements, from Minute 1 of the proceedings of the Board at its meeting on July 20-21, 1965, were adopted to apply to the Nansemond River Watershed from the river's confluence with the James River upstream to the dam at Lake Meade in Suffolk:

2. **All known existing treated discharges containing bacteria shall be chlorinated sufficiently and continuously (100% of the time) to maintain a residual which will insure substantially complete removal of coliform organisms. This action is to be instituted immediately by all concerned owners.**

3. **All owners now discharging industrial wastes and sewage shall install facilities which will provide the maximum possible degree of biochemical oxygen demand (BOD) removal; in addition, the effluent from such facilities shall contain a minimum of 5 mg/l of dissolved oxygen (D.O.).**

4. **All owners in the area (City of Suffolk, County of Nansemond, industrial establishments and individuals) shall immediately take steps to collect and treat, in accordance with items 2 and 3 above, the wastes that are now being discharged untreated either directly or indirectly to the River and Shingle Creek and which now constitute a health hazard to the area.**

5. **The City of Suffolk, the County of Nansemond, and those private owners who are now discharging sewage and industrial wastes to these waters are to immediately initiate programs to formulate a plan, or alternative plans, for improving water quality in the River and Shingle Creek. Alternative plans may include conveying all wastes completely from out of this watershed for treatment and/or disposal. Only under exceptional circumstances will additional discharges of treated wastes into these waters be permitted.**

The Board established these requirements because, based on evidence presented at a public hearing on May 4-5, 1965, and the information presented by the staff in its technical report entitled "The Nansemond River Watershed - Water Quality Aspects", it determined that portions of the watershed were degraded to the point of the contravention of certain uses.

m. **The following effluent standards apply to the entire Chickahominy Watershed above Walker's Dam:**

CONSTITUENT	CONCENTRATION
1. **Bio-chemical Oxygen demand 5-day at 20°**	**6.0 mg/l monthly average, with not more than 5% of individual samples to exceed 8.0 mg/l**
2. **Settleable Solids**	**Not to exceed 0.1 ml/l**
3. **Suspended Solids**	**5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l**

	CONSTITUENT	CONCENTRATION
4.	**Ammonia Nitrogen**	**Not to exceed 2.0 mg/l as N**
5.	**Total Phosphorus**	**Not to exceed 0.1 mg/l monthly average for all discharges with the exception of Holly Farms Poultry Industries, Inc. which shall meet 0.3 mg/l monthly average and 0.5 mg/l daily maximum**
6.	**Other Physical and Chemical Constitutents**	**Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.**

Standards to protect the Chickahominy Watershed are long-standing. The Watershed is impounded by Walker's Dam, serves as a water supply source for the City of Newport News, is an excellent fishery and is in an area which is subject to growth pressure. To protect the watershed from water quality problems associated with these factors and to protect existing and intended water uses, in July 1966, the Board adopted standards of effluent quality for discharges into the watershed above Walker's Dam. The action was based on information obtained in a July 11-12, 1966, public hearing and the staff's technical report entitled "A Water Quality Study of the Chickahominy River". In 1970 amendments were proposed to update the effluent standards. They were considered in a November 18, 1970, public hearing and adopted in February 1971 in unanimous letter ballot 2144. Following a public hearing on March 17, 1981, the Board, by unanimous vote on letter ballot 4862 dated April 13, 1981, adopted revisions to this special standard. These revisions are incorporated in Items 1-6 above, and became effective December 12, 1981.

n. **The following, from Minute 38 of the proceedings of the Board at its meeting on March 30, 1955, will also apply:**

> **No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Bosher and Williams Island Dams.**

The Board's action was based upon the following items:

1. During periods of low stream flows, all flow in a portion of the James below Boshers Dam virtually stops due to the diversion of water behind the dam into a canal;

2. The City of Richmond's water supply is usually obtained from the James River at Williams Island (except during those low flow periods when the river's flow is diverted into the above-mentioned canal and the City's supply is taken only from the canal).

3. Recreational uses, including swimming and fishing, are well established in the area.

o. **The following from Minute 32 of the proceedings of the Board at its meeting on September 13, 1960, will also apply:**

> **The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes which are now present in the stream from natural sources and from existing discharges in the watershed.**

This "no net increase of material of sewage origin" policy for the Tuckahoe Creek watershed was developed to protect various uses of the creek, including its use as an auxiliary water source for the City of Richmond, in light of anticipated population growth in the Henrico, Goochland, and Hanover portions of the Watershed.

p. **Radiation Standard**

1. **Radium-226 not to exceed 3 pc/l.**
   Strontium-90 not to exceed 10 pc/l.

2. **In the known absence of strontium-90 and alpha-emitting radionuclides, gross beta activity not to exceed 1,000 pc/l.**

3. **If the gross beta activity is in excess of this amount, a more complete radiochemical analysis is required to determine that the sources of radiation exposure are within the limits of the Radiation Protection Guides.**

q. **Rappahannock River Basin**

The following effluent standards (adopted in Minute 17 from the proceedings of the Board at its meeting on September 17-18, 1972) apply to all waste discharges to the Rappahannock River Basin above the proposed Salem Church Dam in accordance with paragraphs a and b below:

CONSTITUENT	FINAL EFFLUENT REQUIREMENTS (WEEKLY AVERAGE)
BOD - mg/l	1
COD - mg/l	10
Suspended solids - mg/l	0 (unmeasurable)
MBAS - mg/l	0.1
Turbidity (Jackson Units)	0.4
Fecal Coliform Bacteria per 100 ml sample	Less than 2
Nitrogen - mg/l	1
Phosphorus - mg/l	0.1

a. **After the date of Congressional authorization for actual construction of the dam has been given, all new proposals shall comply fully with the adopted standards of paragraph (1) above and all existing owners shall immediately commence the necessary planning, financing and design to insure that facilities are completed prior to final completion of the construction of the dam, and**

b. **Any new proposals for waste discharges to the area encompassed by the standards shall provide such conventional treatment that in the opinion of the State Department of Health, the staff and the Board, satisfactory advanced waste treatment units can readily be added when funds for construction of the Salem Church Dam have been authorized.**

These effluent requirements will apply if the proposed Salem Church Dam is constructed, since, with the dam's construction, the Rappahannock River would be changed from a free-flowing stream to an impoundment which would serve, among other things, as a domestic water supply. The strict effluent limits were intended to prevent the water quality problems that can occur when wastewater with insufficient nutrient removal is discharged into an impoundment and to protect the impoundment's proposed use as a water supply.

The standards were proposed at a public hearing on September 29, 1971, and adopted in Minute 17 from the proceedings of the Board at its September 17-18, 1972 meeting.

r. **Zinc (total) not to exceed 0.5 mg/l at any time.**

s. **Chlorides not to exceed 40 mg/l at any time.**

t. **Chlorides not to exceed 8000 mg/l at any time.**

u. **Maximum temperature for the New River Basin from West Virginia State line upstream to the Giles - Montgomery County line:**

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature standards for the New River would be consistent with those of West Virginia since the stream flows into that state.

v. **The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina State line shall be 29°C (84°F).**

w. **In Minute 3 from its meeting on March 10-11, 1977, the Board authorized a variance to the General Standard relating to zinc for the length of Ash Camp Creek and a portion of Little Roanoke Creek from the confluence of Ash Camp Creek to the Route 47 bridge.**

5.02 Scenic Rivers

The Designation of a Scenic River and the significance of this designation are the subject of the Scenic Rivers Act (Section 10-167 *et seq* of the Code of Virginia).

The listing of Scenic Rivers that follows imposes no additional Water Control Board requirements or standards. It is only a means to identify for this booklet those streams that have been included by the General Assembly in the Scenic Rivers System.

POTOMAC RIVER BASIN

Potomac River Subbasin

SR-1 Goose Creek from its confluence with the Potomac River upstream to the Fauqier-Loudoun County line (about 28 miles).

SR-2 Catoctin Creek in Loudoun County from its confluence with the Potomac River upstream to the Town of Waterford.

Shenandoah River Subbasin

SR-3 The Shenandoah River in Clark County from the Warren-Clark County line to Lockes Landing.

JAMES RIVER BASIN

SR-4 The Saint Marys River in Augusta County within the George Washington National Forest.

SR-5 Rivanna River from its confluence with the James River upstream to the Fluvanna-Albemarle County line.

SR-6 Appomattox River from the Route 36 bridge crossing in the City of Petersburg upstream to the abutment dam located about 1.3 miles below Lake Chesdin (about 5 miles).

ROANOKE RIVER BASIN

SR-7 Roanoke (Staunton) River from Brookneal upstream to Long Island.

CHOWAN AND DISMAL SWAMP BASIN

Chowan River Subbasin

SR-8 The Nottoway River in Sussex County from the Route 40 bridge at Stony Creek to the Southampton County line.

6. WATER QUALITY CRITERIA

In its 1977 amendments to Virginia's Water Quality Standards, the Board included the adoption of water quality criteria for certain substances in surface water and groundwater. These may be found in Sections 6.01 and 6.02 below.

Since there are differing interpretations of the term criteria, the Board's distinction between *criteria* and *standards* in its Water Quality Standards book should be explained. Both criteria and standards describe a desired degree of water quality either with narrative statements, or by numeric limits for specific substances. Criteria are *recommended* concentrations of substances that, when not exceeded, should generally protect the aquatic environment for aquatic life and various water uses with an adequate degree of safety. The Board-adopted criteria are guidelines only, which may serve as a base of information for various Board programs. They are not intended for direct regulatory use and should not be considered as absolute, mandatory requirements to maintain any specific degree of water quality. Criteria are not standards; they carry no regulatory mandate and must be justified independently in each application. Criteria differ from standards, which are legally enforceable water quality requirements adopted for a particular waterway. A *standard* has direct regulatory use - i.e., effluent limits placed in a discharge permit *must ensure* that water quality standards are met in the receiving stream. The Board will undoubtedly be developing standards in the future based on these criteria, but the actual values of the standards could be different from the criteria in the final analysis and adoption process.

6.01 Water Quality Criteria for Surface Water

Cadmium	5.0	ug/l - Class I and II waters
	0.4 ug/l - soft water* / 1.2 ug/l - hard water	Class III, IV, V, and VI waters for cladocerans and salmonid fishes
	4.0 ug/l - soft water* / 12.0 ug/l - hard water	Class III, IV, V, and VI waters for other less sensitive species
Chlorine	0.5	ug/l - Class I and II waters
	1.0	ug/l - Class III, IV, V, and VI waters
Chromium (total)	100	ug/l - All waters
Copper		0.1 times the 96-hour LC_{50} value as determined through nonaerated, continuous flow bioassay, using the receiving water or comparable water as the diluent and using a sensitive resident species
Cyanide	5.0	ug/l - All Waters
Iron	1.0	mg/l - Class III, IV, V, and VI waters
Lead		0.01 times the 96-hour LC_{50} value as determined through continuous flow bioassay, using the receiving or comparable water as the diluent and soluble lead measurements (non-filterable lead using an 0.45 micron filter), for sensitive freshwater fish species.
Manganese	100	ug/l - Class I and II waters
Mercury	0.10	ug/l - Class I and II waters
	0.05	ug/l - Class III, IV, V, and VI waters

*Soft water generally is considered to be less than 100 mg/l hardness as $CaCO_3$ and hard water generally is 100 mg/l $CaCO_3$ or greater.

6.01 Water Quality Criteria for Surface Water (Contd.)

Nickel		0.01 times the 96-hour LC_{50} value as determined through continuous flow bioassay using the receiving or comparable water as the diluent and using a sensitive resident species
Phenol	1.0	ug/l - All waters
Phthalate Ester	3.0	ug/l - Class III, IV, V, and VI waters (3 ug/l is a goal for Class I and II waters pending additional effect data)
Polychlorinated biphenyls		Zero
Selenium		For marine and aquatic life 0.01 times the 96-hour LC_{50} value as determined through continuous flow bioassay using receiving or comparable dilution water and using a sensitive resident fish species.
Silver		Zero
Zinc		For freshwater aquatic life 0.01 times the 96-hour LC_{50} value as determined through continuous flow bioassay using receiving or comparable dilution water and using a sensitive resident species.
Nutrients		In impounded waters, the total phosphates as phosphorous (P) should not exceed 50 ug/l in any stream where it enters a lake or reservoir nor 25 ug/l within the lake or reservoir.
Oil and Grease		0.01 times the lowest continuous flow 96-hour LC_{50} value for several important freshwater and marine species, each having a demonstrated high susceptibility to oils and petrochemicals.

Pesticides

Aldrin/Dieldrin	0.003 ug/l - All waters
Chlordane	0.004 ug/l - Class I and II 0.01 ug/l - Class III, IV, V and VI waters
DDT	0.001 ug/l - All waters
Demeton	0.1 ug/l - All waters
Endosulfan	0.001 ug/l - Class I and II waters 0.003 ug/l - Class II, IV, V, and VI waters
Endrin	0.004 ug/l - All waters
Guthion	0.01 ug/l - All waters
Heptachlor	0.001 ug/l - All waters

6.01 Water Quality Criteria for Surface Water (Contd.)

Kepone	Zero
Lindane	0.004 ug/l - Class I and II waters 0.01 ug/l - Class III, IV, V, and VI waters
Malathion	0.1 ug/l - All waters
Methoxychlor	0.03 ug/l - All waters
Mirex	Zero
Parathion	0.04 ug/l - All waters
Toxaphene	Zero

6.02 Water Quality Criteria for Groundwater

These groundwater quality criteria apply primarily to groundwater constituents that occur naturally. Since natural groundwater quality can vary greatly from area to area for these constituents, enforceable standards were not adopted. These criteria are intended to provide guidance in preventing groundwater pollution. (For additional information about their development see page 9.) Groundwater criteria carry the same regulatory limitation as surface water criteria: they are not mandatory.

CONSTITUENT	UNITS	GROUNDWATER CRITERIA BY PHYSIOGRAPHIC PROVINCE***			
		Coastal Plain	Piedmont & Blue Ridge	Valley & Ridge	Cumberland Plateau
Alkalinity	(mg/l)	30-500	10-200	30-500	30-200
Total Dissolved Solids	(mg/l)	1000	250	500	500
Chloride	(mg/l)	50*	25	25	25
Sulfate	(mg/l)	50	25	100	150
Total Organic Carbon	(mg/l)	10	10	10	10
Color	(color units)	15	15	15	15
Iron	(mg/l)	0.3	0.3	0.3	0.01-10
Manganese	(mg/l)	0.05	0.05	0.05	0.01- 0.5
Sodium	(mg/l)	100*	25	25	100
Fluoride	(mg/l)	1.4**	1.4	1.4	1.4
Hardness	(mg/l)	120	120	300	180

*It is recognized that naturally occurring concentrations will exceed this limit in the eastern part of the Coastal Plain, especially toward the shoreline and with increased depth.

**Except within the cretaceous aquifers concentration up to 5 mg/l and higher.

***See map, page 11, for delineation of physiographic provinces.

APPENDIX III-12

Commonwealth of Virginia State Water Control Board Procedural Rule No.2

Commonwealth of Virginia
STATE WATER CONTROL BOARD

PROCEDURAL RULE NO. 2

Adopted: March 25, 1980.

Effective: June 10, 1980.

No-Discharge Certificates: Procedures for Applications, for Issuance, and for Requests for Modification or Revocation

2.01 Purpose.

This Rule sets forth the administrative procedures to be followed in connection with applications and requests for the issuance, modification or revocation of State no-discharge certificates issued by the State Water Control Board (Board). They supplement, and do not replace, the Board documents entitled "Information to be Submitted in Applying for No-Discharge Certificates for Industrial Wastes and Other Wastes," "Application for an Animal Waste Management Certificate," and the "Virginia Sewerage Regulations." Copies of these documents are available upon request. Additions to or replacement of the foregoing documents shall not affect the applicability of these rules, unless specified in such document. The applicable document should be followed when applying for a certificate.

2.02 Regulatory Authority.

The authority for the issuance, modification or revocation of State no-discharge certificates is vested in the Board by the State Water Control Law (the Law), [§ 62.1-44.2 *et seq.* of the Code of Virginia (1950) as amended] specifically § § 62.1-44.15(1), 62.1-44.15(5), 62.1-44.16, 62.1-44.17, 62.1-44.18, 62.1-44.18:2, and 62.1-44.19. This rule is adopted under § 62.1-44.15(7).

2.03 Definitions.

For purposes of this Rule, the term "certificate" means a no-discharge certificate issued by the Board involving the potential discharge of industrial wastes or other wastes to State waters. Unless otherwise indicated, the definitions contained in § 62.1-44.3 of the Code, the Board's Procedural Rule No. 1 and Regulation No. 6 apply.

2.04 Requirement for Certificate.

(a) Who Must apply.

(1) The following must have a valid certificate:

(A) Category 1: Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment which generates industrial wastes, sewage, or other wastes that are not disposed of by discharging to municipal treatment facilities or to State waters pursuant to a valid NPDES Permit;

(B) Category 2: Any owner who stores or accepts for disposal or disposes of industrial wastes, sewage or other wastes by land application, irrigation, or by any other land disposal process;

(C) Category 3: Any owner who has been requested by the Board or the Board's Executive Secretary to install facilities or adopt measures approved by the Board pursuant to § 62.1-44.17 of the Code.

(2) The Executive Secretary may waive the requirement for a certificate for an owner in category 1 or 2 who holds a permit issued by the State Health Department under Article 1, Chapter 6, Title 32.1 of the Code.

(b) When to apply.

(1) Applications for a certificate must be made and a certificate must be obtained by owners in Category 1 prior to construction, opening, reopening, expansion, employment of new process, or operation of the establishment, whichever applies.

(2) Application must be made and a certificate must be obtained by owners in Category 2 prior to the storage or disposal of industrial wastes, sewage, or other wastes.

(3) Where conventional technology is involved in the process and in treating any wastes, and where a completed application, accompanied by plans and specifications where appropriate, has been submitted, the Executive Secretary may authorize an activity described in (b) (1) of this section for a Category 1 facility or storage or disposal for a Category 2 facility prior to issuance of the certificate if he has reasonable gorunds to believe that there will be no discharge to state waters from the operation. Such authorization by the Executive Secretary shall in no way be binding on the final decision to issue a certificate, and the owner shall commence the operation at his own risk. The Executive Secretary may withdraw his authorization under this paragraph if there is an actual discharge to State waters from the authorized operation, or for other good cause.

(4) Application must be made by owners in Category 3 upon request by the Board or the Executive Secretary.

2.05 Filing and Contents of Application.

(a) The format and contents of the application shall follow the documents listed in §2.01 and any other applicable guidelines, criteria and regulations. The application shall be filed with the Board's regional office for the region in which the establishment is located or, in the case of Category 2, in which storage or disposal will take place.

(b) The application shall be signed as follows:

(1) In the case of corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the establishment described in the application.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal, State or other public establishment or treatment works, by either a principal executive officer, ranking elected official or other duly authorized employee.

(c) All parties with significant operational control of the facility or operation must be identified in the application.

(d) The staff of the Board shall review the application for completeness. Owners who have failed to submit a complete application, including necessary plans, specifications, and other information, will be requested by the Board's staff, in writing, to furnish such information as is necessary to permit processing of the application. In making any request for information necessary to complete an application, the Board's staff shall inform the owner that processing of the application will be suspended until such information is furnished.

2.06 Public Notice.

(a) Upon receipt of a complete application, or upon the Executive Secretary's determination in accordance with Section 2.08(c), the Executive Secretary shall cause notice of the application or tentative determination to be published once a week for two successive weeks in a newspaper of general circulation within the locality of the activity described in the application or request. In addition to any other information required by

law, the public notice shall include:

(1) The name, address and telephone number of the Board Office at which interested persons may obtain copies of the application or request for modification or revocation and other information relevant thereto;

(2) The name and address of the applicant or certificate holder;

(3) A brief description of the activity or operation for which the application or request is made;

(4) A precise description of the location of such activity, making reference, where possible, to street address, route numbers, intersections, map coordinates or similar information;

(5) A brief description of the procedures for formulation of final determinations, including the 30-day comment period required by paragraph (b) of this section and the means by which interested persons may comment on the application or tentative determination.

(b) The Executive Secretary shall provide a period of not less than 30 days following the date of the first publication of Public Notice during which interested persons may submit written comments and requests for a public hearing on the application or request. All written comments received during the comment period will be retained and considered in the final decision on the application or request.

2.07 Hearings and Final Decisions.

(a) The Executive Secretary shall consider all written comments and requests for hearing received during the comment period, and shall make a determination on the necessity of a hearing in accordance with § 1.12 of the Board's Procedural Rule No. 1. All proceedings, hearings and decisions therefrom will be in accordance with the Board's Procedural Rule No. 1.

(b) Should the Executive Secretary, in accordance with § 1.14 of Procedural Rule No. 1, determine to dispense with the hearing he shall review the application or request, together with all written comments thereon and relevant staff documents and make a decision to approve, conditionally approve, or deny the application or request. If the decision is to approve or conditionally approve the application or request, then the Executive Secretary may either issue the certificate or transmit a staff recommendation, together with any supporting documents, to the Board for final consideration. If the decision is to deny the application or request, then the Executive Secretary shall transmit a staff recommendation together with any supporting documents, to the Board for final consideration.

2.08 Requests for Modifications or Revocations.

(a) The certificate holder or his representative or the Board's staff may, at any time, file with the Executive Secretary a written request that a certificate be modified or revoked. Requests for modification or revocation of certificates shall contain the following information:

(1) If the request is made by the certificate holder, the name, mailing address and telephone number of the requester and the name, mailing address, and telephone number of anyone representing him; and

(2) Where applicable, a statement specifically setting forth the requested modifications, and the reasons therefor; and

(3) Where applicable, a statement specifically setting forth the reasons for the requested revocation.

(b) The Board's staff shall review all requests for modification or revocation filed in accordance with this section for completeness. Owners who have failed to submit a complete modification request will be requested by the Board's staff, in writing, to furnish such information as is necessary to permit processing of the modification request. In making any request for additional information, the Board's staff shall inform the owner that processing of the modification request may be suspended until such information is furnished. When the application is found to be complete, a tentative determination shall be made to grant or deny the requested modification or revocation.

The Executive Secretary shall act as soon as possible, in accordance with one of the following subsections:

(c) The Executive Secretary shall, in his discretion, either (I) promptly schedule a public hearing and advertise it as provided in § 1.12(d) of Rule 1, or (II) publish public

notice of his determination in accordance with § 2.06 of this Rule, if he finds the following:

(1) The certificate holder objects to the proposed revocation and the proposed revocation is not on its face inconsistent with or in violation of the Law, federal law or any pertinent regulation; or

(2) The requested modification is not a minor one but affects the substance of the certificate, and the requested modification is not on its face inconsistent with or in violation of the Law, federal law, or any pertinent regulation.

(d) The Executive Secretary or the Board may, without public notice, grant the requested modification where the Executive Secretary finds the following:

(1) The certificate holder has either requested the modification, or does not object; and

(2) The requested modification is not inconsistent with or in violation of the Law, federal law or any pertinent regulation; and

(3) The requested modification is a minor one and does not affect the substance of the certificate.

(e) The Board may, without public notice, grant the requested revocation where it finds that the certificate holder has either requested the revocation, or does not object.

(f) The Executive Secretary may, without public notice, grant a requested modification to reflect solely a change in ownership where he finds that the new owner agrees to be subject to and bound by the same application and certificate conditions as the existing owner.

(g) The Executive Secretary shall summarily deny the requested modification or revocation where he finds that it is on its face inconsistent with or in violation of the Law, federal law or any pertinent regulation.

APPENDIX III-13

Commonwealth of Virginia State Board of Health, Sewage Handling and Disposal Regulations

PROCEDURES

Procedure I

Steps To Install An On-Site Sewage Disposal System For A Single Family Dwelling

(Type I and IV Systems See Sec. 3.13 a and d)

Step	Procedure	Remarks
1	Obtain an application for a permit to install the system.	Applications are available at all local health departments (Sec. 3.13.01).
2	Complete the application and attach a sketch of the site (sketch of the property and surroundings including dimensions, existing sewage and water systems etc. influencing the location of the proposed sewage system and water supply system if applicable).	The local sanitarian can assist in preparation of the application or providing advice regarding requirements for the sketch/plat (Sec. 3.16.01; 4.02 and Appendix II).
3	Submit the application and sketch/plat to the local health department in the county/city in which system is to be installed.	If the application is for a Type IV system for new construction, a variance issued by the local building official is required.
4	Make an appointment with the sanitarian to visit the property. (The property lines and the area proposed for the sewage disposal system and building site should be indicated by stakes.)	It is recommended that you be present when sanitarian evaluates the site and soil (Sec. 4.01:02).
5	The sanitarian will evaluate the site and soil to include reserve area where required.	The sanitarian may require additional information such as percolation tests before the system can be designed. (Sec. 4.05.03b). If pumping or siphon is involved go to step 6, Table II.
6	If the soil and site are satisfactory the sanitarian will design a system and a construction permit will be issued.	If you are denied a permit turn to Procedure VII for instructions.
7	Upon presenting the sewage disposal system construction permit to the building official your building permit will be issued and you may proceed to construct the sewage disposal system.	Required by Section 32.1-165 Code of Virginia.
8	The local health department must inspect and approve the sewage disposal system before it is covered and before an operation permit is issued and the system placed in service. If an individual water supply is constructed in conjunction with the sewage system it too must be inspected and approved before the operation permit is issued.	Before you release your contractor(s) from his obligation to install the system properly, insist on receiving the local health department's written approval including the contractor's completion statement (Sec. 3.20; 3.21.02).
9	In the event the system fails to operate satisfactorily contact your local health department where assistance can be obtained. (Sec. 3.23)	Sewage disposal systems require maintenance and a septic tank will usually need cleaning every 3-5 years.

10	The sewage disposal system must be inspected and approved by the local health department before it is covered and before an operation permit can be issued. If an individual water supply is to be constructed in conjunction with the sewage system it too must be inspected and approved before the operation permit is issued.	Before you release your contractor(s) from his obligation to install the system properly, insist on receiving the local health department's written approval including the contractor's completion statement (Sec. 3.20; 3.21.02); where formal plans were required, you should also obtain the engineers completion statement (Sec. 3.21.01:02 and 3.22).
11	In the event the system fails to operate satisfactorily contact your local health department where assistance can be obtained (Sec. 3.23)	Sewage disposal systems require maintenance and a septic tank will usually need cleaning every 3-5 years.

Procedure II

Steps To Install A Sewage Disposal System For:

a. Single Family Dwellings Requiring Pumps or Siphons
b. Multiple Dwellings or Dwelling Units
c. Commercial Establishments or,
d. Other Establishments

(Type II Systems Sec. 3.13 b)

Step	Procedure	Remarks
1	Obtain an application for a permit to install the system.	Applications are available at all health departments (Sec. 3.13.01).
2	Complete the application and attach a sketch of the site (sketch of the property and surroundings including dimensions, existing sewage and water systems etc. influencing the location of the proposed sewage system and water supply system if applicable).	The local sanitarian can assist in preparation of the application or providing advice regarding requirements for the sketch/plat (Sec. 3.16.01; 4.02 and Appendix II).
3	Submit the application and sketch/plat to the local health department in the county/city in which system is to be installed.	
4	Make an appointment with the sanitarian to visit the property. (The property lines and the area proposed for the sewage disposal system and building site should be indicated by stakes.)	It is recommended that you be present when sanitarian evaluates the site and soil (Sec. 4.01;02).
5	The sanitarian will evaluate the site and soil and recommend the type system(s) best suited to the site.	The sanitarian may discuss with you a number of alternatives. If you are denied a permit turn to Procedure VII for instructions.
6	If site and oil conditions are satisfactory the sanitarian may design the system or, if the system is complex, require you to submit informal or formal plans/ specifications.	The sanitarian may require you to obtain the services of a licensed Professional Engineer (Sec. 3.14).
7	The sanitarian will schedule a conference to discuss any plans/specifications or other matters.	(Sec. 3.13.02)
8a	If there is no requirement for enginering plans and specifications and all other requirements are satisfied, the construction permit will be issued.	If multiple units are to be served by the system, the permit may only be issued to one owner; the owner must guarantee the system will be maintained (Sec. 3.13.05).
8b	If engineer's services are required, and following approval of the plans/specifications (informal or formal) and such other items required in the regulations, the construction permit will be issued referencing the plans/specifications.	Until the plans and specifications are approved the permit will be withheld (Sec. 3.13.03 and 04; 3.15 and 3.16.02).
9	Upon presenting the sewage disposal construction permit to the building official your building permit will be issued and you may proceed to construct the sewage disposal system.	Required by Section 32.1-165 Code of Virginia.

Procedure III

Steps To Install A Sewage Disposal System Other Than a Septic Tank and Drainfield

(TYPE III SYSTEMS)

Step	Procedure	Remarks
1	Obtain an application for a permit to install the system.	Applications are available at all local health departments (Sec. 3.13.01).
2	Complete the application and attach a sketch of the site (sketch of the property and surroundings including dimensions, existing sewage and water systems etc. influencing the location of the proposed sewage system and water supply system if applicable).	Local sanitarian can assist in preparing the application or providing advice regarding requirements for the sketch/plat (Sec. 3.16.01; 4.02 and Appendix II).
3	Submit the application and sketch/plat to local health department in the county/city in which system is to be installed.	
4	Make an appointment with the sanitarian to visit the property. (The property lines and the area proposed for the sewage disposal system and building site should be indicated by stakes.)	It is recommended that you be present when sanitarian evaluates the site and soil (Sec. 4.01:02).
5	A preliminary conference should then be scheduled to discuss proposal.	See §3.13.02 applicant and/or engineer should be prepared to discuss the application and supporting documentation.
6	Formal plans and specifications will be required with design criteria to support application. (4 sets required).	See §3.13.03 Must be prepared by a licensed Professional Engineer (§3.14).
7	Upon review and approval of the plans and specifications, a construction permit with 1 copy of stamped plans will be sent to the applicant and 1 copy of each will be sent to the owner's engineer. (Permit will reference plans and specifications.)	(See §3.16) If you are denied a permit turn to Procedure VII for instructions.
8	Upon presentation of the sewage disposal system construction permit to the building official your building permit will be issued and you may proceed to construct the sewage disposal system.	Required by Section 32.1-165 Code of Virginia.
9	The local health department must inspect and approve the sewage disposal system before it is placed in operation or any part covered. If an individual water supply is to be constructed in conjunction with the sewage system it must also be inspected and approved before the operation permit is issued.	Before you release your contractor(s) from his obligation to install the system properly, insist on receiving the local health department's written approval including the completion statements by the contractor and the engineer. (§3.20; 3.21.01; 3.21.02 and 3.22).
10	In the event the system fails to operate satisfactorily contact your local health department where assistance can be obtained (Sec. 3.23).	Type III sewage disposal systems will require certain types of maintenance. Be sure you have all directions for such maintenance (including a maintenance contract if required).

Procedure IV

Steps To Obtain A Conditional Construction Permit

Step	Procedure	Remarks
1	Obtain an application for a permit to install the system.	Applications are available at all local health departments. (Sec. 3.13.01)
2	Complete the application and attach a sketch of the site (sketch of the property and surroundings including dimensions, existing sewage and water systems etc. influencing the location of the proposed sewage system and water supply system if applicable).	The local sanitarian can assist in preparation of the application or providing advice regarding requirements for the sketch/plat (Sec. 3.16.01; 4.02 and Appendix II).
3	Submit the application and sketch/plat to local health department in the county/city in which system is to be installed.	The application shall set forth the special use conditions as well as substantiation of those conditions.
4	Make an appointment with the sanitarian to visit the property. (The property lines and the area proposed for the sewage disposal system and building site should be indicated by stakes.)	It is recommended that you be present when sanitarian evaluates the site and soil (Sec. 4.01;02).
5	The sanitarian will evaluate the site and soil. If there is justification for the conditions proposed in the application the sanitarian will design the system and issue a conditional construction permit and include a letter to you listing all conditions pertaining to the permit.	See Sec. 3.13.06c. You may be required to submit additional data i.e. seasonal water table measurements for a reasonable period to insure adequate safeguards in design. You should be present at site visit.
6	Upon receipt of the permit and letter you must have the permit and letter recorded and indexed in the grantee index of the land records by the Clerk of the Circuit Court having jurisdiction. The conditional permit becomes valid one day after the local health department receives notification from you that the permit has been recorded.	See Sec. 3.13.06f. You must have the permit recorded, and present certification of recordation to the local health department. (If you are denied a permit or do not agree with the conditions imposed in the permit turn to Procedure VII for instructions.)
7	Upon presentation of the sewage disposal system construction permit to the building official, your building permit will be issued and you may proceed with construction of the sewage disposal system.	Required by Section 32.1-165 Code of Virginia.
8	The local health department must inspect and approve the sewage disposal system before it is covered and put into operation. If an individual water supply is constructed in conjunction with the sewage system, it must also be inspected and approved before the operation permit is issued.	Before you release yor contractor(s) from his obligation to install the system properly, insist on receiving the local health department's written approval including the contractor's and engineer's (if applicable) completion statement. See Sec. 3.21.01 and 3:22.
9	In the event the system fails to operate satisfactorily contact your local health department where assistance can be obtained. (Sec. 3.23).	Sewage disposal systems require maintenance and a septic tank will usually require cleaning every 3-5 years.

Procedure V

Steps To Obtain A Variance

Step	Procedure	Remarks
1	Send a letter to the Commissioner through the local health department containing citations to the regulations from which a variance is requested. Indicate the nature and duration of the variance requested. Submit any relevant analyses or data to support the request and any other information you feel is relevant.	Write out clearly the portion of the regulations that are problems in this instance. You must show that no undue health problems would be created by the variance. (See Sec. 3.07.03)
2a	The Commissioner will review the request and make a decision within 60 days and send a letter to you with his decision. If a variance is granted the local health department will attach a copy of variance to the permit.	
2b	The Commissioner will review the request and make a decision within 60 days. If he rejects the request a written rejection notice will be sent to you stating reasons for rejection.	Sec. 3.07.05a. You may petition the Commissioner for hearing within 30 calendar days to challenge the rejection pursuant to Sec. 3.08.

Procedure VI

Steps To Obtain A Special Permit For Experimental Systems

Step	Procedure	Remarks
1a	Application should be made through the local health department to the Director, Bureau of Wastewater Engineering, 109 Governor Street, Richmond, Virginia 23219, Phone 804-786-1755 for a site specific proposal.	Because of the variability of circumstances the exact procedure and information will be determined on a case by case basis in accordance with Section 3.25.
1b	Contact may be directly with the Bureau in instances where no site specific proposal is being made.	

Procedure VII

Appealing The Denial of a Sewage Disposal System Permit

(Sec. 3.01, 3.08, 3.08.01, 3.08.02, 3.09, 3.10, 3.10.01 and 3.11)

Step	Procedure	Remarks
1	Write to the Health Director in the jurisdiction where the permit was denied and request an informal hearing. Give the reasons you have for requesting the hearing and cite the section(s) of the regulations involved.	Having been denied a permit you should have in your possession copies of all the Department's records and reports including a report citing those reasons why the Department has denied your permit. If you do not have this information you will be given the information on request.
2	Upon receipt of your request for an informal hearing the Health Director will advise you of the time and place of the hearing.	
3	At the hearing you, your agent, or your attorney, if you choose to have one present, will be offered the opportunity to present evidence (data, witnesses, etc.) to support your claim that under the conditions of your application the system you seek to install will operate satisfactorily at the specific site.	The burden of proof will rest with you since the Department believes it has exhausted its search for an answer to your problem.
4	The Health Director on hearing the testimony and reviewing all evidence presented will make a preliminary finding of fact and advise you accordingly.	
5	In the event you are not satisfied with the decision, you may request a formal hearing by writing to the State Health Commissioner, include the reason(s) for requesting the appeal and cite the section(s) of the regulations involved.	Upon receipt of your appeal request the Commissioner will acquire copies of all related Department records and reports; these will be reviewed to assure proper processing.
6	You will be furnished copies of all related Departmental records and reports and be advised of the time and place for your case to be heard and the basic law(s) under which the Department exercises its authority.	The Commissioner's representative will contact you or your attorney regarding your upcoming appeal.
7	At the hearing you will be offered the opportunity to submit oral and documentray evidence and rebuttal proofs and conduct cross examinations.	You may bring such witness(es) as you believe will help your case.
8	The Commissioner or his appointee will preside over the hearing.	A verbatim record will be made of the hearing.
9	Following the hearing (usually within 60 days) the Commissioner will make a finding of fact, and advise you in writing of his conclusion(s) regarding your case.	
10	In the event you are not satisfied with the decision you may seek judicial review.	

Procedure VIII

Steps To Obtain A Sewage Handling Permit

(Section 3.26)

Step	Procedure	Remarks
1	Obtain and complete an application for a Sewage Handling Permit.	Applications are available at all local health departments (Section 3.26, Appendix III, Pages III-1 through III-4).
2	If a special facility is required, schedule a site visit to the proposed site with the sanitarian.	
3	Schedule a preliminary conference with the local or district health department to discuss the methods and equipment to be utilized in the handling and disposal of sewage.	When a special facility is required (see 3.26.04, 6.03b), you should have your consulting engineer at this conference. The site study and evaluation may be held in connection with this conference.
4	If you decide to proceed with your proposal go to step 6 of Procedure III and follow to completion.	Anaerobic lagoon requirements are contained in Section 16.00. If you propose to land apply stablized septage, a no-discharge certificate will be required from the State Water Control Board.
5	Upon completion of all requirements, including plans and specifications review and approval, site approval, approval of method of final disposal of stablized septage, a construction permit will be issued.	An operation and maintenance manual will be required.
6	The health department must inspect and approve the special facility before an operation permit is issued and the system placed in service.	Before you release your contractor(s) from his obligation to property, install the system, insist on receiving the department's approval, including the contractor(s) and engineer's completion statement(s). (See 3.20, 3.21.01; 02 and 3.22)
7	Schedule an appointment with the sanitarian to discuss methods and equipment to be utilized in the handling and disposal of sewage.	
8	Schedule an appointment with the sanitarian to inspect the equipment to be utilized.	This procedure may be accomplished during step 7 if desired. (See 3.26.03, 15.00)
9	Upon approval of the application, disposal site(s) and equipment, a permit is issued by the local health department.	Section 3.26, 6.12.03, 6.03a, 15.00.

GENERAL SUMMARY OF REGULATIONS

Arrangement of the regulations

The new regulations are arranged in five major parts. The first four parts are subdivided into 18 sections. The fifth part is the appendix and contains copies of excerpts from Title 32.1, Code of Virginia and all forms and applications related to on-site sewage handling and disposal.

Part A

Part A entitled ***General Framework for the Regulations*** contains Sections 1.00 *General Authority* and 2.00 *Definitions*. Significant subsections are 1.05 which establishes a Sewage Handling and Disposal Advisory Committee and 1.06 which is the Grandfather Clause.

Part B

Part B entitled ***Procedural Regulations*** contains Section 3.00 *Procedures*. Section 3.00 contains all administrative procedures associated with issuance or denial of permits, and administration of the regulations.

Part C

Part C entitled ***General Criteria and Methods for Sewage Handling and Disposal*** contains Sections 4.00 through 7.00 which are entitled *Evaluation Criteria for Subsurface Soil Absorption Systems, Pump and Haul of Sewage, Sewage Handling* and *Installation of Residential Sewage Disposal Systems in Political Subdivisions Having Soil Drainage Management Contracts With The State Health Department* respectively. Deviation from the criteria and procedures contained in Parts A, B and C require a variance issued by the State Health Commissioner.

Part D

Part D entitled ***Design and Construction Criteria*** contains Sections 8.00 through 18.00 which are entitled *General Requirements, Building Sewers, Pre-Treatment Systems, Conveyance Systems, Subsurface Soil Absorption Systems, Privies, Storage Facilities Criteria For Pump & Haul of Sewage, Vehicle Specifications for Sewage Handling, Anaerobic Lagooning of Septage, Sewage Dump Stations* and *Non-Public Drinking Water Supply Systems Utilized in Conjunction With On-Site Sewage Disposal* respectively. Part D contains all the detailed design and construction criteria. Minor deviations (exceptions) from the provisions of this part of the regulations may be authorized at the local level; however, a major deviation is subject to variance authorized by the Commissioner.

Part E

Part E is the ***Appendix.***

Requirements for Systems (Sec. 1.07) **Building Permit** (Code of Va. §32.1-165)

All places for human occupancy are required to have available, safe, adequate and proper sewage treatment and disposal. Therefore, before a building permit can be issued by the local building official, assurances must be given that an acceptable means of sewage treatment and disposal are available for the site.

Sewage Disposal Construction Permit Application (§3.13) **Filing the Application** (§3.13) **Processing of the Application** (§3.13 and/or 3.14, 3.15) **Discharging treated Sewage: State Water Control Board Permit** (§1.03)

When an on-site sewage treatment and disposal facility is to be considered, an applicant must complete a permit application request for the facility. The application forms are available at all local health departments. The application form must be completed and filed by the applicant with the local health department in the jurisdiction where the construction is to take place. Processing will include evaluating the information submitted on the application and examining the site to determine if the soil on the property can be safely used to dispose of the wastewater that will be generated. In the event the application is for a sewage treatment plant with a discharge to state waters, the applicant will be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the State Water Control Board authorizing the discharge.

Issuing Sewage Disposal Construction Permits (§3.12; 3.13; 3.14 & 3.16)

If the site is acceptable and depending on the complexity of the system required, one of the following will occur; (1) the sanitarian may design the system and issue the construction permit (2) the applicant may be requested to submit additional information before the sanitarian can complete the design or (3) the applicant may be required to obtain the services of a licensed engineer to design the system. A permit, if issued, will be issued only to a single owner.

Individual drinking water supply systems requiring approval (§18.00)

Newly constructed nonpublic drinking water supply systems utilized in conjunction with on-site sewage disposal systems permitted under these regulations will not require a separate permit. However, they will be required to be constructed and approved by the local heath department as outlined in the regulations before they can be placed in service.

Type water supplies requiring approval (§18.02; 18.03; 18.04)

Types of nonpublic water supplies that will require approval include wells, cisterns, and springs.

Conditional Permit (§3.13.06)

Where the soil and site conditions meet the criteria established in the regulations conditional permits may be issued if the applicant can show that there will be reduced water flow, limitations on the number of persons to be served, intermittent or seasonal use of the facility, or temporary use of the system not to exceed one year. Conditional permits are required to be recorded and indexed in the grantee index in the land records of the Clerk of the Circuit Court.

Exceptions to design criteria (§3.16.03)

Exceptions to the design criteria in Part D may be considered if the imposed condition(s) is not justified by the health consideration(s) upon which criteria are based and when repairing a failing system.

Permits for Experimental Systems (§3.25)

Application for a permit for experimental systems must be made through the local health department to the Bureau of Wastewater Engineering. After a thorough review of the method, process and/or equipment to be tested, the Bureau may recommend to the Commissioner that he issue an experimental permit.

Variances to Regulations (§3.07)

A variance is a waiver to a specific regulation and can only be granted by the Commissioner. To be considered, the applicant must submit to the Commissioner, through the local health department, information to support his request for the variance. The variance request should cite that section of the regulation from which the variance is sought, its nature and duration, any analytical or test data supporting the variance request, an explanation of why the public health would be better served or not adversely impacted by the variance and any other information the applicant wishes to submit or that the department may require.

Denial of Construction Permits (§3.17)

In the event a construction permit is denied, the applicant will receive a written explanation of the basis for denial of the permit.

Voidance of Construction Permits (§3.18.01)

Permits will be voided if the conditions change from those shown on the application or construction permit.

Revalidation of Construction Permits (§3.18.01)

The local health department will revalidate a construction permit issued in accordance with these regulations if the application and site conditions remain unchanged.

"Grandfathering" of existing outdated Permits (§1.06)

Subdivision approvals granted in accordance with local ordinances *will not* be reevaluated as a result of these Regulations.

Evaluation of individual lots within an "approved" subdivision will be based upon the 1971 Regulations. However, since the 1971 Regulations do not address soils with percolation rates greater than 60 minutes per inch these Regulations will be used in their entirety for soils with percolation rates greater than 60 minutes per inch but less than or equal to 120 minutes per inch except that the reseve area requirement will be waived unless it was a preexisting local requirement.

Notice of Denial of a construction permit for a lot in an "approved" subdivision will be sent by registered mail return receipt requested to both the lot owner and the owner of record of the subdivision.

Previously issued permits will be honored if the permit has been properly issued and soil and site conditions are satisfactory. The Permit will not be reissued utilizing the criteria in these Regulations unless the Permit was not properly issued in accordance with the 1971 Regulations.

Permit & Bonding required to pump & haul sewage (§3.29)

Special permits are required to pump and haul sewage and or construct a storage facility associated with the pumping and hauling of sewage. Bonding may be required as a prerequisite to issuance of a permit. Under certain circumstances the Department may consider permitting pumping and hauling of sewage as a

temporary means for disposing of sewage. (Facilities at marinas and other places where boats are moored are exempt from this section of the regulations since they are covered by other regulations governing sewage.)

Filing application for temporary pump & haul (§3.30)
Contract with sewage handling contractor required (§3.30; 3.30.04)
Concurrence of local political subdivision (§3.09)
Denial of pump and haul permit (§3.09)

As with other requests for sewage disposal, the owner must file an application with the local health department where the proposal will be evaluated. In addition to the application, the owner must secure and maintain a contract with a sewage handling contractor having a valid Sewage Handling Permit. This must be filed and evaluated with the application. Also, before a permit can be issued, the concurrence of the local political subdivision representative will be required.

In the event a permit is denied, the local health department is obligated to give the applicant in writing the reasons for denying the permit. The same review process as previously addressed may be used by the applicant in seeking relief from a denial.

Permit required for sewage handling (§3.12.02; 3.26)

Inspecting sewage handling equipment (§3.26.03)

Applicant who is non-owner of treatment works

Permit issuance for handling sewage (§3.27)

Permit constraints (§3.28)

To acquire a Sewage Handling Permit, an individual will be required to demonstrate that he has an approved disposal site. Any person who removes or contracts to remove sewage from a holding facility (septic tank, vault privy etc.) must have a Sewage Handling Permit issued by the Commissioner. An application must be filed with the local or district health department in the area in which the handler will operate. No permit is required for the handling of sewage from a holding tank on a vehicle or vessel by the owner of such vehicle or vessel or the removal of screenings, sludges, grit, etc. from a sewage treatment plant by owner or employees of such treatment facilities since these are covered by separate regulations. When the application is filed, the Department's agent will arrange to inspect the equipment and approve of the disposal site(s). In the event the applicant is not the owner of the sewage system or treatment works then the applicant must append a statement to the application from the owner of the approved sewage system or treatment works stating that the applicant may discharge septage and/or sewage into the facility. The statement must contain the quantity per day of sewage that is permitted to be discharged as well as the point of discharge. Each disposal site shall be considered separately. When a permit is issued, it will be for a period not to exceed twelve months and may be revoked in the event a potential or real health hazard associated with the sewage handling operation occurs or should the conditions change from those shown on the application.

Permit revoked or denied (§3.09; 3.28)

In the event a permit is revoked or denied, the local health department will give the owner in writing the reasons for the revocation or denial. The owner may seek relief from the revocation or denial by following the procedures used by the Department in reviewing a reapplication or processing an appeal.

Inspection and approval of systems prior to use (§3.20)

Before any part of the system is put to use, it is necessary that the local health department inspect each part of the system to insure that it has been installed according to the construction permit and regulations.

Requirement for Construction Completion Statement from contractor and/or engineer (§3.21)

Upon completion or modification of the system a signed statement from the system's contractor that the system is installed according to the construction permit and in compliance with Part D of the Regulations is required. In the event formal plans and specifications were required setting forth the design of the system, the department will require that the designing engineer submit a signed statement that the system is installed according to the approved plans and specifications.

Issuance of Operation Permits (§3.22)

Systems installed but not approved (§3.20)

If the system is constructed as specified by the permit and/or by the plans and specifications and upon receipt of completion(s) statement, the inspecting agent will prepare an operation permit. Upon receipt of the operation permit the owner may proceed to use the system. In the event the system is not approved, the agent will advise the applicant, or his agent, of those reasons why the installation was not approved and give written recommendations as to what must be done to acquire approval. Once the corrections are made and verified by inspection, the operation permit will be issued.

Compliance with the Administrative Process Act (§3.10)

Any applicant for a permit or any person whose permit has been revoked may seek relief from the denial of the permit or the revocation of the permit by appealing the local department's decision. The appeal procedure is in conformity with the Administrative Process Act, the first step of which consists of an informal hearing at the district health department in the locality where the permit/revocation took place. In the event of nonresolution, a formal hearing can be requested. The formal hearing shall be held by the Commissioner or his appointee. Judicial review may be requested of the Commissioner's decision.

Subdivision plat review

Where local ordinances require the local health department to review subdivision plats for individual sewage disposal systems, the local health department shall require the subdivider to show as a minimum the location of the proposed on-site sewage disposal system and the reserve absorption area, if required; the location of the water supply system on each lot, if applicable and the specific soil information for each lot, as necessary (3.24).

Furthermore, the local health department may require such additional information as streets, utility line locations, contour interval, grading, etc., to assist them with their decision to approve or disapprove the subdivision plat.

APPENDIX III-14

Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

PART II

GENERAL PROVISIONS

Effective Date: March 17, 1972

Promulgated: March 17, 1972

Amended: August 11, 1972
Amended: December 5, 1973
Amended: February 3, 1974
Amended: July 5, 1974
Amended: December 20, 1974
Amended: August 9, 1975
Amended: December 6, 1975
Amended: December 10, 1976
Amended: April 8, 1977
Amended: September 30, 1977
Amended: October 6, 1978
Amended: January 30, 1979
Amended: August 3, 1979
Amended: October 5, 1979
Amended: November 30, 1979
Amended: February 8, 1980
Amended: April 3, 1981
Amended: July 31, 1981
Amended: July 1, 1982
Amended: March 1, 1983
Amended: January 1, 1985

§ 120-02-01 APPLICABILITY

A. The provisions of these regulations, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of these regulations, unless specified otherwise, shall apply to only those pollutants for which ambient air quality standards are set forth in Part III and/or for which emission standards are set forth in Parts IV, V and VI.

C. No provision of these regulations shall limit the power of the Board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

§ 120-02-02 ESTABLISHMENT OF REGULATIONS AND ORDERS

A. Regulations for the Control and Abatement of Air Pollution are established to implement the provisions of the Virginia Air Pollution Control Law and the Federal Clean Air Act.

B. Regulations for the Control and Abatement of Air Pollution shall be adopted, amended or repealed in accordance with the provisions of § 10-17.18 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Guidelines in Appendix E.

C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the Board.

D. If necessary in an emergency situation, the Board may adopt, amend or stay a regulation as an exclusion under § 9-6.14:6 of the Administrative Process Act, but such rule or regulation shall remain effective no longer than 60 days unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; such orders are subject to the provisions of subsection F of this section.

E. Any reference to any provision of Title 40 of the Code of Federal Regulations shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in 40 CFR (1984) dated July 1, 1984. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means Section 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

F. Orders, special orders and emergency special orders may be issued pursuant to § 10-17.18(d) or 10-17.18:1 of the Virginia Air Pollution Control Law.

§ 120-02-03 ENFORCEMENT OF REGULATIONS AND ORDERS

A. Whenever the Executive Director or his designated representative has reason to believe that a violation of any provision of these regulations or any order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of these regulations or the order involved and the facts on which the violation is based. The Executive Director or his designated representative may act as the agent of the Board to obtain compliance through either of the following enforcement proceedings:

1. Administrative Proceedings

The Executive Director or his designated representative may negotiate to obtain compliance through administrative means. Such means may be a variance, control program, consent agreement or any other mechanism that mandates compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement. Unless specified otherwise in these regulations, the administrative means shall be approved by the Board.

2. Judicial Proceedings

The Executive Director or his designated representative may obtain compliance through legal means pursuant to § 10-17.23 or § 10-17.29 of the Virginia Air Pollution Control Law.

B. Nothing in this section shall prevent the Executive Director or his

designated representive from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Orders, consent orders, delayed compliance orders, special orders and emergency special orders are considered administrative means and the Board reserves the right to use such means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the Executive Director or his designated representative under subsection A of this section.

D. Any enforcement proceeding under this section may be used as a mechanism to insure that the compliance status of any source is reasonably maintained by the owner.

§ 120-02-04 HEARINGS AND PROCEEDINGS

A. Hearings and proceedings by the Board may take any of the following forms:

1. The public hearing and informational proceeding required before considering regulations or variances, in accordance with § 10-17.18(b) and (c) of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7 of the Administrative Process Act, except as modified by § 10-17.18(b), (c) and (h) of the Virginia Air Pollution Control Law.

2. The informal fact finding proceeding which, with all parties consenting, may be used to ascertain facts upon which decisions of the Board are based, in accordance with § 9-6.14:11 of the Administrative Process Act. The procedure for an informal fact finding proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

3. The formal hearing for the determination of violations, and for the enforcement or review of its orders and regulations, in accordance with § 10-17.18(d) of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10-17.18(d) and (h) of the Virginia Air Pollution Control Law.

4. The special order hearing or emergency special order hearing for the determination of violations, and for the enforcement or review of its orders and regulations, in accordance with § 10-17.18:1 of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10-17.18:1 of the Virginia Air Pollution Control Law.

B. Records of hearings by the Board may be kept in either of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may

be transcribed to written form.

2. Formal hearings and hearings for the issuance of special orders or emergency special orders will be recorded by a court reporter, or electronically recorded for transcription to written form.

C. Availability of Record of Hearings by the Board

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. Any person desiring a copy of the transcript of a special order, emergency special order or formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

§ 120-02-05 VARIANCES

A. General

1. Pursuant to § 10-17.18(c) of the Virginia Air Pollution Control Law, the Board at its discretion may grant variances to any provision of these regulations after a public hearing in accordance with § 120-02-04 A 1.

2. Notices of public hearings on applications for variances shall be advertised in at least one major newspaper of general circulation in the affected Air Quality Control Region at least 30 days prior to the date of the hearing.

B. Fuel Variance

1. Regardless of any other provision of this section, the Executive Director may grant a fuel variance for fuel burning equipment from applicable provisions of these regulations if, after a thorough investigation and public hearing, he finds that:

a. The owner, in good faith and prior to the request for the fuel variance, has attempted to comply with applicable provisions of these regulations.

b. The owner has substantial cause to believe he will be unable to obtain the fuel to operate the equipment in compliance with applicable provisions of these regulations.

c. The maximum particulate and sulfur dioxide emissions from fuels permitted in the fuel variance would be the lowest that the available fuels will permit.

d. The need for the requested fuel variance could not have been avoided by the owner.

e. The period of the fuel variance will not exceed the reasonably predicted shortage of fuel which would allow compliance with these regulations, or 120 days, whichever is less.

2. The owner requesting the fuel variance shall submit the following, where appropriate, to the Executive Director:

a. The requested commencement and termination dates of the fuel variance.

b. The type and quantity of fuel to be used under the requested fuel variance, along with the maximum ash and sulfur content, if any.

c. An affidavit stating why the owner is unable to, or has substantial cause to believe that he will be unable to, obtain fuel which would allow compliance with applicable provisions of these regulations.

d. An estimate of the amount of fuel to be conserved.

e. An estimate of the increased air pollutants that might cause violations of the ambient air quality standards.

f. An estimate, with reasons given, of the duration of the shortage of fuel which would allow compliance with applicable provisions of these regulations.

g. Such other information as the Executive Director may require to make his findings as provided in subsection B 1 of this section.

3. Notice of public hearings on applications for fuel variances shall be advertised at least 10 days prior to the date of the hearing, in at least one major newspaper of general circulation in the Air Quality Control Region in which the affected source is located.

4. Fuel variances may be granted only for individual sources, and not for categories or classes.

5. No fuel variance shall be granted for more than 120 days. Any request for a variance for a period beyond 120 days shall be governed by the provisions of subsection A of this section, except that the Board, where appropriate, may require compliance with any of the conditions and requirements herein.

C. Nothing in this section shall be construed to limit, alter or otherwise affect the obligation of any person to comply with any provision of these regulations not specifically affected by this section.

§ 120-02-06 LOCAL ORDINANCES

A. Establishment/Approval

1. Any local governing body proposing to adopt or amend an ordinance,

relating to air pollution shall first obtain the approval of the Board as to the provisions of the ordinance or amendment. The Board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as State regulations, except as provided for leaf burning in § 10-17.18(b) of the Virginia Air Pollution Control Law.

2. Approval of any local ordinance shall be withdrawn if the Board determines that the local ordinance is less strict than State regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to State regulations, such local amendment will be made within six months.

B. Reports

Local ordinances shall provide for reporting such information as may be required by the Board to fulfill its responsibilities under the Virginia Air Pollution Control Law and the Federal Clean Air Act. Such reports shall include, but are not limited to: monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings and status of control programs and permits.

C. Relationship to State Regulations

Local ordinances are a supplement to State regulations. Any provisions of local ordinances which have been approved by the Board and are more strict than State regulations shall take precedence over State regulations within the respective locality. It is the intention of the Board to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and State regulations. The Board will also provide technical and other assistance to local authorities in the development of ambient air quality or emission standards, in the investigation and study of air pollution problems, and in the enforcement of local ordinances and State regulations. The Board emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the Board reserves the right to enforce State regulations.

D. Variances

A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

1. A public hearing is held prior to granting the variance;

2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

3. The variance does not permit any owner or other person to take action that would result in a violation of any provision of State regulations unless a variance is granted by the Board. The public hearings required for the variances to the local ordinance and State regulations may be conducted jointly as one proceeding.

§ 120-02-07 CIRCUMVENTION

A. No owner or other person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants which would otherwise violate these regulations. Such concealment includes, but is not limited to, either of the following:

1. The use of gaseous diluents to achieve compliance with a visible emissions standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

2. The piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

B. This section does not prohibit the construction of a stack.

§ 120-02-08 SEVERABILITY

If any provision of these regulations or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other provision of these regulations which can be given effect without the invalid provisions or application, and to this end the provisions of these regulations and the various applications thereof are declared to be severable.

§ 120-02-09 APPEALS

A. Any owner or other person aggrieved by any action of the Board taken without a formal hearing, or by inaction of the Board, may demand a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such petition shall be filed within 30 days after notice of such action is mailed or delivered to such owner or other person.

B. Prior to any formal hearing, the Board shall, provided all parties consent, ascertain the fact basis for its decision in accordance with § 9-6.14:11 of the Administrative Process Act.

C. Any decision of the Board resultant from a formal hearing shall constitute the final decision of the Board.

D. Any owner or other person aggrieved by a final decision of the Board may appeal such decision in accordance with § 10-17.23:2 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act. Any petition for appeal shall be filled within 30 days after the date of such final decision.

E. Nothing in this section shall prevent disposition of any case by consent.

F. Any petition for a formal hearing or for an appeal by itself shall not constitute a stay of decision or action.

§ 120-02-10 RIGHT OF ENTRY

Whenever it is necessary for the purposes of these regulations the Board may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10-17.22 of the Virginia Air Pollution Control Law.

§ 120-02-11 CONDITIONS ON APPROVALS

A. The Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with these regulations. Except as specified herein, nothing in these regulations shall be understood to limit the power of the Board in this regard. If the owner or other person fails to adhere to such conditions, the Board may automatically cancel such permit or approvals. Without limiting the generality of this section, this section shall apply to: approval of variances, approval of control programs, granting of new or modified source permits and granting of open burning permits.

B. An owner may consider any condition imposed by the Board as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the Board pursuant to § 120-02-09.

§ 120-02-12 PROCEDURAL INFORMATION AND GUIDANCE

A. The Board may adopt detailed procedures which:

1. Require data and information in addition to and in amplification of the provisions of these regulations;

2. Are reasonably designed to determine compliance with applicable provisions of these regulations; and

3. Set forth the format by which all data and information shall be submitted.

B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the Board or other similar phrasing, the owner may request information and guidance concerning the proper

procedures and methods and the Board shall furnish in writing such information on a case-by-case basis.

§ 120-02-13 DELEGATION OF AUTHORITY

In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the Board confers upon the Executive Director such administrative and decision making powers as are set forth in Appendix F.

§ 120-02-14 CONSIDERATIONS FOR APPROVAL ACTIONS

Pursuant to the provisions of § 10-17.18(e) and (f) of the Virginia Air Pollution Control Law the following considerations shall be followed in approvals:

A. The Board, in making regulations, in approving variances, control programs, or permits, shall take into consideration such relevant facts and circumstances as may be presented bearing upon the reasonableness of the activity involved and the regulations proposed to control it, including:

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

2. The social and economic value of the activity involved;

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

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

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

§ 120-02-15 - § 120-02-29 RESERVED

§ 120-02-30 AVAILABILITY OF INFORMATION

A. Emission data provided to, or otherwise obtained by, the Board in accordance with the provisions of these regulations shall be available to the public.

B. Except as provided in subsection A of this section, any records, reports or information provided to, or otherwise obtained by, the Board in accordance with provisions of these regulations shall be available to the public, except that:

1. Upon a showing satisfactory to the Board by any owner that such records or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such owner, the Board shall consider such records, reports or information, or particular part thereof, confidential in accordance with the purposes of § 10-17.21 of the Virginia Air Pollution Control Law except that such records, reports or information, or particular part thereof, may be disclosed to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the Federal Clean Air Act; and

2. Information received by the Board in accordance with § 120-02-31, § 120-02-32, Part VII and Part VIII of these regulations shall not be disclosed if it is identified by the owner as being a trade secret or commercial or financial information which such owner considers confidential.

§ 120-02-31 REGISTRATION

The owner of any stationary source to which permits are issued under Part VIII or for which emission standards are given in Parts IV, V or VI shall, upon request of the Board, register such source operations with the Board and update such registration information. The information required for registration shall be determined by the Board and shall be provided in the manner specified by the Board. Owners should review the emission standard for their respective source type to identify the exemption levels for purposes of this section.

§ 120-02-32 CONTROL PROGRAMS

A. Under the provisions of § 120-02-03 A, the Board may require an owner of a stationary source to submit a control program, in a form and manner satisfactory to the Board, showing how compliance shall be achieved as quickly as possible.

B. The Board shall act within 90 days of receiving an acceptable control program. A public hearing will be held within this period. The hearing shall be held only after reasonable notice, at least 30 days prior to the hearing date, which shall include:

1. Notice given to the public by advertisement in at least one major newspaper of general circulation in the affected Air Quality Control Region;

2. Availability of the information in the control program (exclusive of confidential information under the provisions of § 120-02-30) for public inspection in at least one location in the affected Air Quality Control Region; and

3. Notification to all local air pollution control agencies having State Implementation Plan responsibilities in the affected Air Quality Control Region, all states sharing the affected Air Quality Control Region, and the Regional Administrator of the U.S. Environmental Protection Agency.

C. When acting upon control programs, the Board shall be guided by the provisions of the Federal Clean Air Act.

D. The Board may require owners submitting a control program to submit periodic progress reports in the form and manner acceptable to the Board.

E. The Board normally will take action on all control programs within 30 days after the date of the public hearing unless more information is required. The Board shall notify the applicant in writing of its decision on the control program and shall set forth its reasons therefor.

F. The owner may appeal the decision pursuant to § 120-02-09.

§ 120-02-33 RESERVED

[The provisions of this section have been relocated to Part VIII and redesignated § 120-08-01]

§ 120-02-34 FACILITY AND CONTROL EQUIPMENT MAINTENANCE OR MALFUNCTION

A. At all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.

B. In case of shutdown and/or bypassing of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than 1 hour, the intent to shut down such equipment shall be reported to the Board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit and/or registration number.

2. The expected length of time that the air pollution control equipment will be out of service.

3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period.

4. Measures that will be taken to minimize the length of the shutdown or to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than 1 hour, the owner shall, as soon as practicable but no later than 4 daytime business hours, notify the Board by telephone or telegraph of such failure or malfunction and shall then provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of § 120-04-05 C and § 120-05-05 C are not required to provide the written statement prescribed in this paragraph for facilities subject to the monitoring requirements of § 120-04-04 and § 120-05-04. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the Board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, within 30 days of the failure or malfunction and semi-monthly thereafter until the failure or malfunction is corrected, submit to the Board a written report containing the following:

1. Identification of the specific facility that is affected as well as its location and permit and/or registration number.

2. The expected length of time that the air pollution control equipment will be out of service.

3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period.

4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period.

5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the provisions of these regulations within 30 days of the malfunction or failure.

6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the provisions of these regulations.

7. Any other pertinent information as may be requested by the Board.

E. The procedural requirements of subsection D of this section shall not apply beyond 3 months of the date of the malfunction or failure. Should the breakdown period exist past the 3-month period, the owner may apply for a variance in accordance with § 120-02-05 A.

F. The following special provisions govern facilities which are subject to the provisions of Rule 4-3, Rule 5-3 or Rule 6-1:

1. Nothing in this section shall be understood to allow any such

facility to operate in violation of applicable emission standards, except that all such facilities shall be subject to the reporting and notification procedures in this section.

2. Any facility which is subject to the provisions of Rule 6-1 shall shut down immediately if it is unable to meet the applicable emission standards, and it shall not return to operation until it is able to operate in compliance with the applicable emission standards.

3. Regardless of any other provision of this section, any facility which is subject to the provisions of Rule 4-3 or 5-3 shall shut down immediately upon request of the Board if its emissions increase in any amount because of a bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment; and such facility shall not return to operation until it and the associated air pollution control equipment are able to operate in a proper manner.

G. No violation of applicable emission standards or monitoring requirements shall be judged to have taken place if the excess emissions or cessation of monitoring activities is due to a malfunction, provided that:

1. The procedural requirements of this section are met and/or the owner has submitted an acceptable application for a variance, which is subsequently granted;

2. The owner has taken expedient and reasonable measures to minimize emissions during the breakdown period;

3. The owner has taken expedient and reasonable measures to correct the malfunction and return the facility to a normal operation; and

4. The source is in compliance at least 90 percent of the operating time over the most recent 12-month period.

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in these regulations.

I. Regardless of any other provision of this section, the owner of any facility subject to the provisions of these regulations shall, upon request of the Board, reduce the level of operation at the facility if the Board determines that this is necessary to prevent a violation of any primary ambient air quality standard. Under worst case conditions, the Board may order that the owner shut down the facility, if there is no other method of operation to avoid a violation of the primary ambient air quality standard. The Board reserves the right to prescribe the method of determining if a facility will cause such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any primary ambient air quality standard.

APPENDIX V-1

Regulation XXIX of the Marine Resources Commission

EMERGENCY REGULATION XXIX

PERTAINING TO THE TAKING OF STRIPED BASS

PREAMBLE

WHEREAS Virginia's commercial harvest of striped bass has declined from 2,888,000 pounds in 1973 to less than 395,000 pounds in 1981;

WHEREAS Virginia's 1983 commercial harvest of striped bass is estimated to be about 100,000 pounds;

WHEREAS Atlantic Coast striped bass stocks have continued to decline in spite of recent management efforts;

WHEREAS the trend of striped bass annual survival has been below a level necessary for replacement for the last ten years;

WHEREAS given the present status of the striped bass stocks, an estimated three-fold increase in total egg production is now necessary to sustain present stock size;

WHEREAS an estimated six-fold increase in egg production is necessary to facilitate the stock rebuilding process;

WHEREAS a most effective means of increasing egg production is to reduce total harvest and to protect striped bass while on their spawning grounds;

WHEREAS the Virginia Institute of Marine Science in a 1983 report entitled "Assessment of Larval Striped Bass Stocks in Maryland and Virginia Waters" indicates that the striped bass spawning reach of the Rappahannock River is significantly further downstream than described in the MRC Regulation XXIX promulgated on December 21, 1982;

WHEREAS the Striped Bass Management Board and the Interstate Fisheries Management Policy Board of the Atlantic States Marine Fisheries Commission formally agree that an emergency situation exists with regard to the future brood stocks of Chesapeake Bay striped bass;

FURTHER the Commission believes that even if the cause for the recent production failure of Chesapeake striped bass is determined not to be excessive fishing pressure, it is clear that restoration to historical levels of abundance cannot occur unless that pressure is controlled;

THEREFORE realizing that the 1984 spawning season will commence on or about April 1 and that significant action must be taken prior to the arrival of the striped bass to their spawning grounds, the Commission does declare that an emergency exists.

THEREFORE acting under the authority granted to the Marine Resources Commission pursuant to Sections 28.1-23, 28.1-50 and 28.1-69.1 of the Code of Virginia as amended, and with the approval of the Governor, the following emergency regulation is hereby promulgated pursuant to Section 9-6.14:6(iii):

1. AUTHORITY, PRIOR REGULATIONS, EFFECTIVE DATE: (a) This Regulation is promulgated pursuant to the authority contained in Section 28.1-23, 28.1-50 and 28.1-69.1 of the Code of Virginia, as amended.

(b) This Regulation amends the previous Regulation XXIX, Pertaining to the Taking of Striped Bass, which was promulgated by the Marine Resources Commission and made effective April 10, 1983.

(c) The effective date of this Regulation is March 1, 1984.

(d) This Regulation shall terminate on December 31, 1984 or when superseded by other Regulation. The Marine Resources Commission will receive, consider, and respond to petitions by any interested person at any time for the reconsideration or revision of this Regulation.

2. PURPOSE: The purpose of this Regulation is to provide for the long-term conservation of striped bass stocks of the Chesapeake Bay and its tributaries. This Regulation serves as a response to the intent of the management strategies suggested by the Interstate Fisheries Management Plan for the Striped Bass as adopted and amended by the Atlantic States Marine Fisheries Commission.

3. DEFINITIONS: (a) Spawning Rivers - the James, Pamunkey, Mattaponi, and Rappahannock Rivers including all their tributaries.

(b) Spawning Reaches - sections within the spawning rivers as follows:

(i) James River: From a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point;

(ii) Pamunkey River: From the Route 33 bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore;

(iii) Mattaponi River: From the Route 33 bridge at West Point to the Route 360 bridge at Aylett;

(iv) Rappahannock River: From the Route 360 bridge at Tappahannock upstream to the Route 3 bridge at Fredericksburg.

4. CLOSED AREAS, SEASON, AND GEAR LIMITATIONS: (a) The closed season for the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers shall be from April 1 through May 31, inclusive.

(b) No anchored or staked gill net may be set or fished within the spawning reaches during the closed season. Drift (float) gill nets may be set or fished within the spawning reaches during the closed season, but the fisherman must remain with such net while that net is in the fishing position.

(c) Striped bass taken in the spawning reaches by any gear, including hook-and-line, shall be returned immediately to the water during the closed season.

(d) Possession of any striped bass by any person, firm, or corporation within the spawning reaches during the closed season shall be a violation of this Regulation except as provided in (e) below.

(e) Striped bass taken outside of the spawning reaches may be transported and landed within these areas provided prior notice is given to the Marine Resources Commission.

5. TERRITORIAL SEA: (a) A minimum size limit of twenty-four inches (24") in length is imposed on all striped bass taken in the Territorial Sea with the following exceptions:

(i) No more than five percent of a total daily catch of striped bass may consist of striped bass less than twenty-four inches (24") in length and at least fourteen inches (14") in length if the catch was made by net, and

(ii) It shall be unlawful for any person, firm or corporation to take or catch and retain possession of any striped bass from the Territorial Sea during the period March 1 through May 31, inclusive.

(b) Length is measured in a straight line from tip of nose to tip of tail.

6. CREEL LIMIT: Except as provided in 4.(c) and 5.(a)(ii), above, a possession limit of five (5) striped bass per person per day is imposed on all recreational hook-and-line fishermen taking striped bass from the tidal waters of Virginia.

7. ENFORCEMENT: Any uniformed officer of the Marine Resources Commission and any game warden of the Commission of Game and Inland Fisheries shall have the authority to enforce the provisions of this Regulation.

8. PENALTY: As set forth in Section 28.1-23, any person, firm, or corporation violating any provision of this Regulation shall be guilty of a Class I misdemeanor.

* * * * * * * * * * * * * *

This is to certify that the foregoing is a true and accurate copy of Emergency Regulations passed by the Marine Resources Commission, having first secured the approval of the Governor, pursuant to the authority vested in the Commission by Sections 28.1-23, 28.1-50 and 28.1-69.1 of the Code of Virginia as amended, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on February 28, 1984.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

By: William A. Pruitt
Commissioner

Subscribed and sworn to before me on this 1st day of March, 1984.

Virginia E. Daniel
NOTARY PUBLIC

My Commission expires
November 17, 1987.

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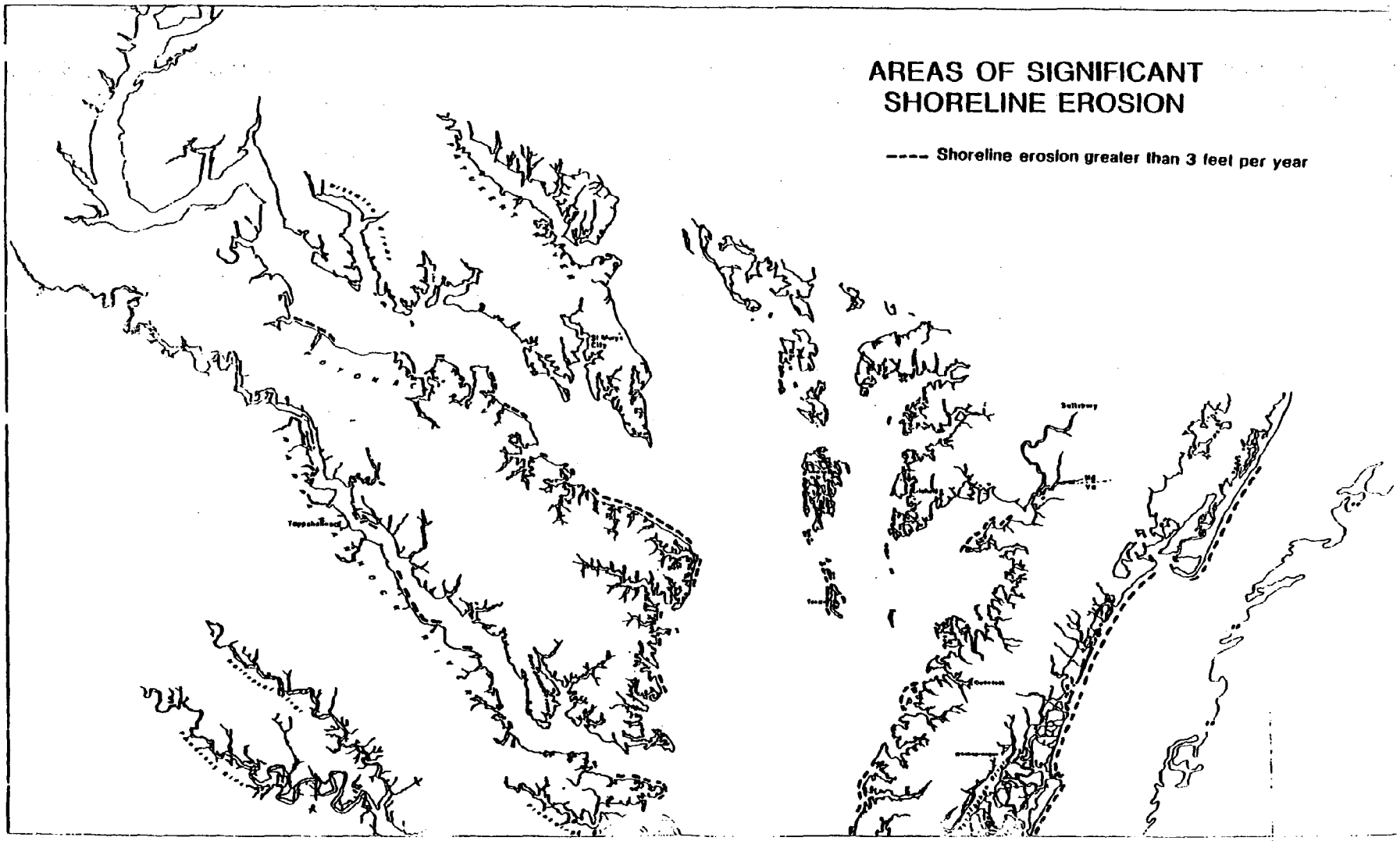
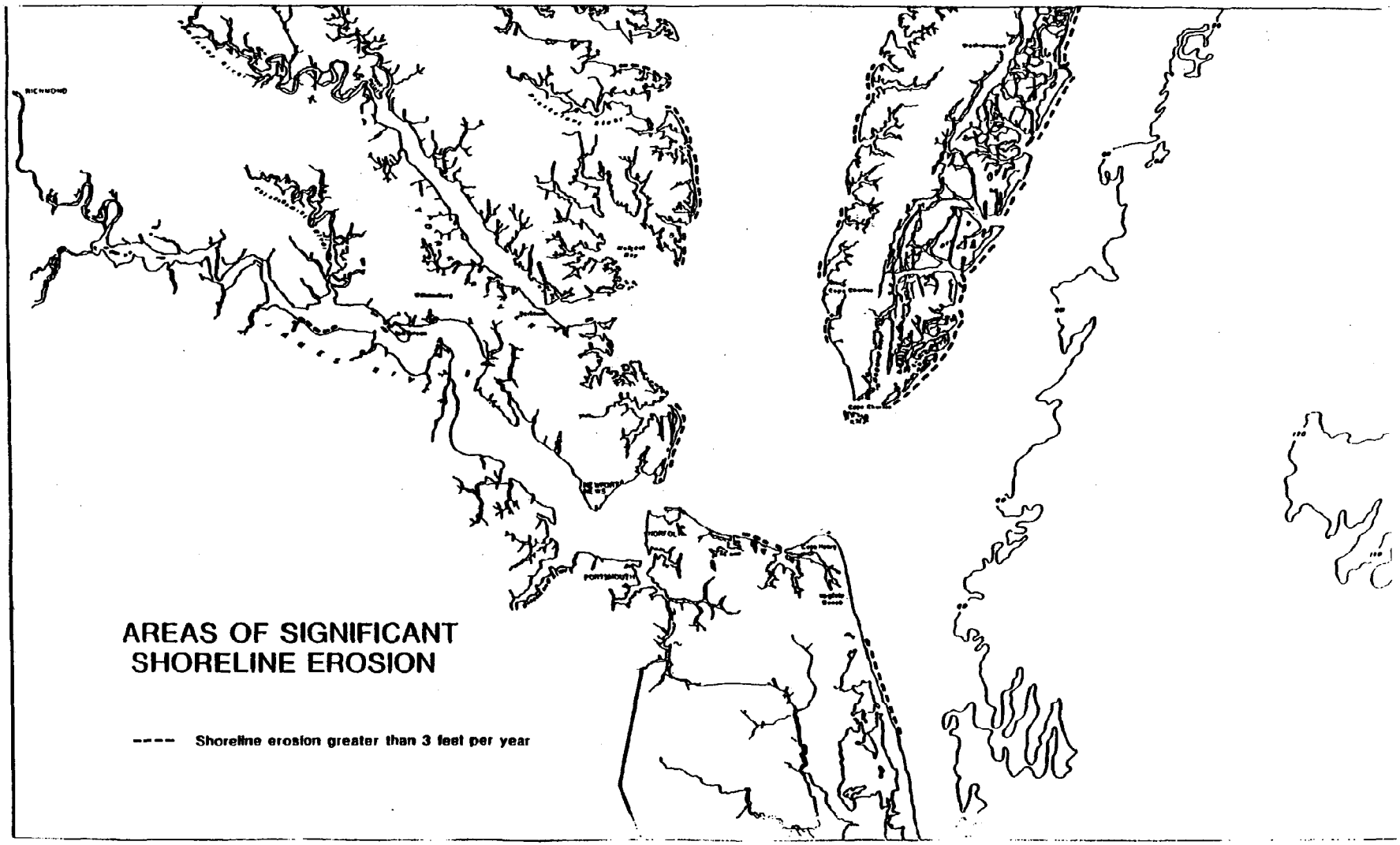
APPENDIX V-2

Areas of Significant Shoreline Erosion


AREAS OF SIGNIFICANT
SHORELINE EROSION
---- Shoreline erosion greater than 3 feet per year


RICHMOND
PORTSMOUTH
AREAS OF SIGNIFICANT
SHORELINE EROSION
---- Shoreline erosion greater than 3 feet per year

APPENDIX V-3

Policy Memorandum 3-78, Flood Plain Management Program for State Agencies

COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

John N. Dalton
Governor

October 23, 1978

POLICY MEMORANDUM NUMBER 3-78

FLOOD PLAIN MANAGEMENT PROGRAM FOR STATE AGENCIES

Background

The availability of flood insurance under the National Flood Insurance Program, as provided for by the National Flood Insurance Act of 1968, as amended, is dependent upon State coordination of federal, State, and local management activities concerning flood plains, mudslide (i.e., mudflow) areas and coastal flooding areas (in this order together referred to as flood problems).

The availability of programs for federal loans and mortgage insurance, State and federal financial assistance and land use planning are determining factors in the utilization of lands. The Commonwealth, with its extensive and continuing programs for the construction of buildings, roads and other facilities, annually acquires and disposes of lands in flood hazard areas, and is in a position to significantly influence patterns of commercial, residential and industrial development away from flood prone areas.

The State Water Control Board is the agency responsible for State level programs of flood plain management and for the review of local regulations necessary for flood insurance under provisions of the National Flood Insurance Act of 1968, as amended, and in accordance with Virginia's Flood Damage Reduction Act of 1977 (§§ 62.1-44.108 et seq. of the Code of Virginia (1950), as amended).

Policy Statement

To enable the Commonwealth to insure its properties under the National Flood Insurance Program, it is hereby declared that effective immediately, all agencies of the Commonwealth shall locate, plan, design, build and maintain State-owned property in such a manner as to become and remain eligible for flood insurance coverage under provisions of the National Flood Insurance Program, and shall obtain such coverage.

In furtherance of this policy, the State Water Control Board is hereby designated as the agency to coordinate the implementation of the rules and regulations of the Federal Insurance Administration pertaining to the Federal Flood Insurance Program. The State Water Control Board will encourage a broad, unified effort to prevent uses and development of the State's flood plains in a manner incompatible with the flood potential thereof, and in particular, to lessen the risk of flood losses in connection with State lands and installations, or State and/or Federally financed or supported improvements.

Specifically:

a. Under the leadership and direction of the Secretary of Administration and Finance, and the Department of General Services (and of the State Highway and Transportation Commission for its projects), all State agencies directly responsible for the construction of buildings, structures, roads or other facilities shall evaluate flood hazards when planning the location of new facilities and shall take such action as is necessary to preclude the uneconomic, unnecessary or unnecessarily hazardous use of flood plains in connection with such facilities. If there is no feasible alternative to construction in a flood plain, the flood plain management and flood proofing criteria set forth in the Uniform Statewide Building Code, and in §§ 1910.3, 1910.4 and 1910.5 of the National Flood Insurance Regulations (Title 24 of the Code of Federal Regulations) shall apply. In case of conflict, the most stringent requirements shall be met. Transportation facilities which must be located in floodways shall be designed and constructed so that, together with all other existing or forseeable facilities, they do not raise the level of floodwater more than one foot. Flood proofing measures should be applied to existing facilities in order to reduce flood potential and shall be applied to all substantial improvements thereto (more than 50% of the market value).

b. All State agencies responsible for the administration of any federal or State grant or loan programs involving the construction of buildings, structures, roads or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future disaster relief, shall take such steps as necessary to preclude the uneconomic, unnecessary or unnecessarily hazardous use of flood plains in connection therewith.

c. In order to minimize future public expenditures for flood protection and flood disaster relief, all State agencies responsible for the disposal of lands or properties proposed for disposal to other public instrumentalities or private interests shall attach appropriate restrictions with respect to uses of such lands or properties and may withhold such lands or properties from disposal. In carrying out provisions of this paragraph, each State agency may make appropriate allowances for any estimated loss in sales price resulting from the incorporation of use restrictions in the disposal documents.

d. All State agencies responsible for programs which affect land use planning, including State permit programs, shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.

As may be permitted by law, and in coordination with the State Water Control Board, the Secretary of Administration and Finance, and the Department of General Services; the head of each State agency shall issue appropriate rules, regulations, or procedures to assure compliance with the provisions of this Memorandum.

Governor

cc: The Honorable J. Marshall Coleman
Governor's Secretaries
Heads of all State Agencies and Institutions
Chief Administrative Officers of all Cities,
Towns and Counties

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