

SUBCOMMITTEE: SUBCOMMITTEE #3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

HOUSE BILL NO. 211

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for _____
on _____)

(Patron Prior to Substitute--Delegate Wright)

A BILL to amend and reenact §§ 62.1-44.15:6, 62.1-266, and 62.1-267 of the Code of Virginia, relating to ground water withdrawal permit; 15-year term; permit fee.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:6, 62.1-266, and 62.1-267 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the Board has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a Virginia Pollution Abatement permit shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers- or Department of the

27 Navy-sponsored dredging projects or for the regularly scheduled renewal of an individual permit for an
 28 existing facility. Fees shall be charged for a major modification or reissuance of a permit initiated by the
 29 permittee that occurs between permit issuance and the stated expiration date. No fees shall be charged
 30 for a modification or amendment made at the Board's initiative. In no instance shall the Board exceed
 31 the following amounts for the processing of each type of permit/certificate category:

a	Type of Permit/Certificate Category	Maximum Amount
b	1. Virginia Pollutant Discharge Elimination System	
c	Major Industrial	\$24,000
d	Major Municipal	\$21,300
e	Minor Industrial with nonstandard limits	\$10,300
f	Minor Industrial with standard limits	\$6,600
g	Minor Municipal greater than 100,000 gallons per day	\$7,500
h	Minor Municipal 10,001-100,000 gallons per day	\$6,000
i	Minor Municipal 1,000-10,000 gallons per day	\$5,400
j	Minor Municipal less than 1,000 gallons per day	\$2,000
k	General-industrial stormwater management	\$500
l	General-stormwater management-phase I land clearing	\$500
m	General-stormwater management-phase II land clearing	\$300
n	General-other	\$600
o	2. Virginia Pollution Abatement	
p	Industrial/Wastewater 10 or more inches per year	\$15,000
q	Industrial/Wastewater less than 10 inches per year	\$10,500
r	Industrial/Sludge	\$7,500
s	Municipal/Wastewater	\$13,500
t	Municipal/Sludge	\$7,500
u	General Permit	\$600

v Other \$750

32 The fee for the major modification of a permit or certificate that occurs between the permit
 33 issuance and expiration dates shall be 50 percent of the maximum amount established by this subsection.
 34 No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose
 35 of this subdivision, "minor modifications" or "minor amendments" means specific types of changes
 36 defined by the Board that are made to keep the permit current with routine changes to the facility or its
 37 operation that do not require extensive review. A minor permit modification or amendment does not
 38 substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the
 39 facility to protect human health or the environment.

40 B2. Each permitted facility shall pay a permit maintenance fee to the Board by October 1 of each
 41 year, not to exceed the following amounts:

a	Type of Permit/Certificate Category	Maximum Amount
b	1. Virginia Pollutant Discharge Elimination System	
c	Major Industrial	\$4,800
d	Major Municipal greater than 10 million gallons per day	\$4,750
e	Major Municipal 2-10 million gallons per day	\$4,350
f	Major Municipal less than 2 million gallons per day	\$3,850
g	Minor Industrial with nonstandard limits	\$2,040
h	Minor Industrial with standard limits	\$1,320
i	Minor Industrial water treatment system	\$1,200
j	Minor Municipal greater than 100,000 gallons per day	\$1,500
k	Minor Municipal 10,001-100,000 gallons per day	\$1,200
l	Minor Municipal 1,000-10,000 gallons per day	\$1,080
m	Minor Municipal less than 1,000 gallons per day	\$400
n	2. Virginia Pollution Abatement	
o	Industrial/Wastewater 10 or more inches per year	\$3,000

p	Industrial/Wastewater less than 10 inches per year	\$2,100
q	Industrial/Sludge	\$3,000
r	Municipal/Wastewater	\$2,700
s	Municipal/Sludge	\$1,500

42 An additional permit maintenance fee of \$1,000 shall be collected from facilities in a toxics
 43 management program and an additional permit maintenance fee shall be collected from facilities that
 44 have more than five process wastewater discharge outfalls. Permit maintenance fees shall be collected
 45 annually and shall be remitted by October 1 of each year. For a local government or public service
 46 authority with permits for multiple facilities in a single jurisdiction, the permit maintenance fees for
 47 permits held as of April 1, 2004, shall not exceed \$20,000 per year. No permit maintenance fee shall be
 48 assessed for facilities operating under a general permit or for permits pertaining to a farming operation
 49 engaged in production for market.

50 B3. Permit application fees charged for Virginia Water Protection Permits, ground water
 51 withdrawal permits, and surface water withdrawal permits shall reflect the average time and complexity
 52 of processing a permit in each of the various categories of permits and permit actions and the size of the
 53 proposed impact. Only one permit fee shall be assessed for a water protection permit involving elements
 54 of more than one category of permit fees under this section. The fee shall be assessed based upon the
 55 primary purpose of the proposed activity. In no instance shall the Board charge a fee for a permit
 56 pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of
 57 Engineers- or Department of the Navy-sponsored dredging projects, and in no instance shall the Board
 58 exceed the following amounts for the processing of each type of permit/certificate category:

a	Type of Permit	Maximum Amount
b	1. Virginia Water Protection	
c	Individual-wetland impacts	\$2,400 plus \$220 per 1/10 acre of impact over two acres, not to exceed \$60,000
d	Individual-minimum instream flow	\$25,000

e	Individual-reservoir	\$35,000
f	Individual-nonmetallic mineral mining	\$7,500
g	General-less than 1/10 acre impact	\$0
h	General-1/10 to 1/2 acre impact	\$600
i	General-greater than 1/2 to one acre impact	\$1,200
j	General-greater than one acre to two acres of impact	\$120 per 1/10 acre of impact
k	2. Ground Water Withdrawal	\$6,000 <u>\$9,000</u>
l	3. Surface Water Withdrawal	\$12,000

59 No fees shall be charged for minor modifications or minor amendments to such permits. For the
60 purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of
61 changes defined by the Board that are made to keep the permit current with routine changes to the
62 facility or its operation that do not require extensive review. A minor permit modification or amendment
63 does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of
64 the facility to protect human health or the environment.

65 C. When promulgating regulations establishing permit fees, the Board shall take into account the
66 permit fees charged in neighboring states and the importance of not placing existing or prospective
67 industries in the Commonwealth at a competitive disadvantage.

68 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board
69 shall make a report on the implementation of the water permit program to the Senate Committee on
70 Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House
71 Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources
72 and the House Committee on Finance. The report shall include the following: (i) the total costs, both
73 direct and indirect, including the costs of overhead, water quality planning, water quality assessment,
74 operations coordination, and surface water and ground water investigations, (ii) the total fees collected
75 by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal
76 funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number

77 of permit applications received by category, (vii) the number of permits issued by category, (viii) the
78 progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and
79 indirect costs to neighboring states of administering their water permit programs, including what
80 activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders
81 and applicants.

82 E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund
83 appropriation to the Board.

84 F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any
85 additional permits that may be required by the federal government and administered by the Board, or
86 any new permit required pursuant to any law of the Commonwealth.

87 G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit
88 fees for facilities that have established a record of compliance with the terms and requirements of their
89 permits and shall establish criteria by regulation to provide for reductions in the annual fee amount
90 assessed for facilities accepted into the Department's programs to recognize excellent environmental
91 performance.

92 **§ 62.1-266. Ground water withdrawal permits.**

93 A. The Board may issue any ground water withdrawal permit upon terms, conditions, and
94 limitations necessary for the protection of the public welfare, safety, and health.

95 B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board
96 and shall contain such information, consistent with this chapter, as the Board deems necessary.

97 C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed
98 term not to exceed ~~ten~~ 15 years. The term of a ground water withdrawal permit issued by the Board shall
99 not be extended by modification beyond the maximum duration, and the permit shall expire at the end of
100 the term unless a complete application for a new permit has been filed in a timely manner as required by
101 the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new
102 permit before the expiration date of the previous permit. ~~Any permit to withdraw ground water issued by~~

103 ~~the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its~~
104 ~~issuance.~~

105 D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes
106 such savings as can be demonstrated to have been achieved through water conservation, provided that a
107 beneficial use of the permitted ground water can be demonstrated for the following permit term.

108 E. Any permit issued by the Board under this chapter may, after notice and opportunity for a
109 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided
110 by the regulations of the Board:

111 1. The permittee has violated any regulation or order of the Board pertaining to ground water,
112 any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a
113 court, where such violation presents a hazard or potential hazard to human health or the environment or
114 is representative of a pattern of serious or repeated violations ~~which~~ that, in the opinion of the Board,
115 demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or
116 requirements;

117 2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a
118 material fact in applying for a permit, or in any other report or document required under this chapter or
119 under the ground water withdrawal regulations of the Board;

120 3. The activity for which the permit was issued endangers human health or the environment and
121 can be regulated to acceptable levels by amendment or revocation of the permit; or

122 4. There exists a material change in the basis on which the permit was issued that requires either
123 a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit
124 necessary to protect human health or the environment.

125 F. No application for a ground water withdrawal permit shall be considered complete unless the
126 applicant has provided the Executive Director of the Board with notification from the governing body of
127 the ~~county, city or town~~ locality in which the withdrawal is to occur that the location and operation of
128 the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-

129 2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt
130 from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

131 G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground
132 water through a single well or system of wells, including a backup well or wells, or such other means as
133 the withdrawer specifies.

134 **§ 62.1-267. Issuance of special exceptions.**

135 A. The Board may issue a special-exceptions exception to allow the withdrawal of ground water
136 in-cases the case of an unusual situations where situation in which requiring the user to obtain a ground
137 water withdrawal permit would be contrary to the intended purpose of the Act.

138 B. In reviewing an application for a special exception, the Board may consider the amount and
139 duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the
140 ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any
141 person requesting a special exception shall submit an application to the Board containing such
142 information as the Board shall require by regulation adopted pursuant to this chapter.

143 C. Any special exception issued by the Board shall state the terms pursuant to which the
144 applicant may withdraw ground water, including the amount of ground water that may be withdrawn in
145 any period and the duration of the special exception. No special exception shall be issued for a term
146 exceeding ~~ten~~ 15 years.

147 D. A violation of any term or provision of a special exception shall subject the holder thereof to
148 the same penalties and enforcement procedures as would apply to a violation of a ground water
149 withdrawal permit.

150 E. The Board shall have the power to amend or revoke any special exception after notice and
151 opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or
152 revocation of a ground water withdrawal permit.

153 **2. That the State Water Control Board shall, by a regulation effective January 1, 2019, raise from**
154 **\$6,000 to \$9,000 the permit fee applicable to new or reissued individual ground water withdrawal**
155 **permits or certificates. The adoption of such regulation shall be exempt from the requirements of**

156 Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of
157 Virginia).

158 #