

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia, relating to the
2 Department of Environmental Quality; electronic meetings by the Air Pollution Control Board
3 and the State Water Control Board.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia are amended and reenacted as**
6 **follows:**

7 § 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.

8 A. During the public comment period on a permit action, interested persons may request a public
9 hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory
10 under state or federal law or regulation, interested persons may request, during the public comment
11 period on the permit action, that the Board consider the permit action pursuant to the requirements of
12 this section.

13 B. Requests for a public hearing or Board consideration shall contain the following information:

- 14 1. The name, mailing address, and telephone number of the requester;
- 15 2. The names and addresses of all persons for whom the requester is acting as a representative
16 (for the purposes of this requirement, an unincorporated association is a person);
- 17 3. The reason why a public hearing or Board consideration is requested;
- 18 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
19 requester or of the persons for whom the requester is acting as representative in the application or
20 tentative determination, including an explanation of how and to what extent such interest would be
21 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
22 question; and

23 5. Where possible, specific references to the terms and conditions of the permit in question,
24 together with suggested revisions and alterations of those terms and conditions that the requester

25 considers are needed to conform the permit to the intent and provisions of the State Air Pollution
26 Control Law (§ 10.1-1300 et seq.).

27 C. Upon completion of the public comment period on a permit action, the Director shall review
28 all timely requests for public hearing or Board consideration filed during the public comment period on
29 the permit action and within 30 calendar days following the expiration of the time period for the
30 submission of requests shall grant a public hearing or Board consideration after the public hearing
31 required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if
32 the Director finds the following:

33 1. That there is a significant public interest in the issuance, denial, modification, or revocation of
34 the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public
35 hearing or Board consideration;

36 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,
37 modification, or revocation of the permit in question; and

38 3. That the action requested by the interested party is not on its face inconsistent with, or in
39 violation of, the State Air Pollution Control Law (§ 10.1-1300 et seq.), federal law or any regulation
40 promulgated thereunder.

41 D. Either the Director or a majority of the Board members, acting independently, may request a
42 meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C
43 in order to review such decision and determine by a majority vote of the Board whether or not to grant a
44 public hearing or Board consideration, or to delegate the permit to the Director for his decision.

45 For purposes of this subsection, if a Board meeting is held via electronic communication, ~~the~~
46 ~~Board shall have at least one forum open to the public and individual Board members may participate~~
47 ~~from any location regardless of whether it is open to the public~~ the meeting shall be held in compliance
48 with the provisions § 2.2-3708, except that a quorum of the Board is not required to be physically
49 assembled at one primary or central meeting location. Discussions of the Board held via such electronic
50 communication means shall be specifically limited to those matters identified in this subsection and no
51 other matter of public business shall be discussed or transacted by the Board.

52 E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and
53 (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

54 F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public
55 hearing on a permit action or submit a permit action to the Board for its consideration.

56 G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at
57 a time between 45 and 75 days after mailing of the notice required by subsection E.

58 H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be
59 published once, in a newspaper of general circulation in the city or county where the facility or operation
60 that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

61 I. The Director may, on his own motion or at the request of the applicant or permittee, for good
62 cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for
63 the public hearing after notice has been published, he shall, or require the applicant to, provide
64 reasonable notice of the new date of the public hearing. Such notice shall be published once in the same
65 newspaper where the original notice was published.

66 J. Public hearings held pursuant to these procedures may be conducted by ~~the Board at a regular~~
67 ~~or special meeting of the Board and shall be presided over by a member of the Board. Public hearings~~
68 ~~may be held before less than a quorum of the Board~~ (i) the Board at a regular or special meeting of the
69 Board or (ii) one or more members of the Board. A member of the Board shall preside over the public
70 hearing.

71 K. The presiding Board member shall have the authority to maintain order, preserve the
72 impartiality of the decision process, and conclude the hearing process expeditiously. The presiding
73 Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise
74 the following powers, including but not limited to:

- 75 1. Prescribing the methods and procedures to be used in the presentation of factual data,
76 arguments, and proof orally and in writing including the imposition of reasonable limitations on the time
77 permitted for oral testimony;

78 2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive
79 presentation of them;

80 3. Ruling on procedural matters; and

81 4. Acting as custodian of the record of the public hearing causing all notices and written
82 submittals to be entered in it.

83 L. The public comment period will remain open for 15 days after the close of the public hearing
84 if required by § 10.1-1307.01.

85 M. When the public hearing is conducted by less than a quorum of the Board, the Department
86 shall, promptly after the close of the public hearing comment period, make a report to the Board.

87 N. After the close of the public hearing comment period, the Board shall, at a regular or special
88 meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the
89 public comment period or from a later date, as agreed to by the permittee or applicant and the Board or
90 the Director. The Board shall not take any action on a permit where a public hearing was convened
91 solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to
92 the Board for its consideration pursuant to the provisions of this section.

93 O. When the public hearing was conducted by less than a quorum of the Board, persons who
94 commented during the public comment period shall be afforded an opportunity at the Board meeting
95 when final action is scheduled to respond to any summaries of the public comments prepared by the
96 Department for the Board's consideration subject to such reasonable limitations on the time permitted
97 for oral testimony or presentation of repetitive material as are determined by the Board.

98 P. In making its decision, the Board shall consider (i) the verbal and written comments received
99 during the public comment period made part of the record, (ii) any explanation of comments previously
100 received during the public comment period made at the Board meeting, (iii) the comments and
101 recommendation of the Department, and (iv) the agency files. When the decision of the Board is to
102 adopt the recommendation of the Department, the Board shall provide in writing a clear and concise
103 statement of the legal basis and justification for the decision reached. When the decision of the Board
104 varies from the recommendation of the Department, the Board shall, in consultation with legal counsel,

105 provide a clear and concise statement explaining the reason for the variation and how the Board's
106 decision is in compliance with applicable laws and regulations. The written statement shall be provided
107 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director,
108 shall be mailed by certified mail to the permittee or applicant.

109 § 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.

110 A. During the public comment period on a permit action, interested persons may request a public
111 hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory
112 under state or federal law or regulation, interested persons may request, during the public comment
113 period on the permit action, that the Board consider the permit action pursuant to the requirements of
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121 requester or of the persons for whom the requester is acting as representative in the application or
122 tentative determination, including an explanation of how and to what extent such interest would be
123 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
124 question; and
- 125 5. Where possible, specific references to the terms and conditions of the permit in question,
126 together with suggested revisions and alterations of those terms and conditions that the requester
127 considers are needed to conform the permit to the intent and provisions of the State Water Control Law
128 (§ 62.1-44.2 et seq.).

129 C. Upon completion of the public comment period on a permit action, the Director shall review
130 all timely requests for public hearing or Board consideration filed during the public comment period on
131 the permit action and within 30 calendar days following the expiration of the time period for the

132 submission of requests shall grant a public hearing or Board consideration after the public hearing
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137 hearing or Board consideration;

138 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,
139 modification, or revocation of the permit in question; and

140 3. That the action requested is not on its face inconsistent with, or in violation of, the State Water
141 Control Law (§ 62.1-44.2 et seq.), federal law or any regulation promulgated thereunder.

142 D. Either the Director or a majority of the Board members, acting independently, may request a
143 meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C
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163 cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for
164 the public hearing after notice has been published, he shall, or require the applicant to, provide
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173 impartiality of the decision process, and conclude the hearing process expeditiously. The presiding
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182 4. Acting as custodian of the record of the public hearing causing all notices and written
183 submittals to be entered in it.

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