

**RESOLUTION BY THE VIRGINIA MARINE RESOURCES COMMISSION
CITIZEN BOARD INTERPRETING CODE § 28.2-1203.A.5(iv) and DELEGATING
AUTHORITY TO MAKE THE DETERMINATION CALLED FOR BY CODE § 28.2-
1203.A.5.(iv).**

WHEREAS, by 2003 Act of Assembly Chapter 973 (“Chapter 973”), Code § 28.2-1203.A.5 was amended to add several qualifications concerning when the owners of riparian lands may, without the need for a permit from the Virginia Marine Resources Commission pursuant to Code §§ 28.2-1204 and 1207, place private piers for noncommercial purposes in the waters opposite those riparian lands; and

WHEREAS, among the qualifications added by Chapter 973 is that, pursuant to Code § 28.2- 1203.A.5(iv), said “piers are determined not to be a navigational hazard by the Commission”; and

WHEREAS, Title 28.2 of the Code of Virginia does not consistently use the word “Commission” to refer solely to the Citizen Board (“Citizen Board”) authorized and described in Code § 28.2-102(A), but frequently uses the word “Commission” to refer to the full time staff of the Commission (“staff”), appointed and supervised by the Commissioner as chief executive officer as provided by Code § 28.2-104; and

WHEREAS, the Commission is aware that literally hundreds of applications by riparian owners to place private piers for noncommercial purposes in the waters opposite their riparian lands are annually reviewed by the staff; and

WHEREAS, considering the existing responsibilities of the Citizen Board set out in Code of Virginia Title 28.2, it is unreasonable, both from the perspective of the time available to the Citizen Board and the impact of additional delay on citizens, to expect that the General Assembly intended, by the use of the word “Commission” in Code § 28.2-1203.A(iv), to require the Citizen Board to review the hundreds of applications for private piers in order to determine that each is not a navigational hazard; and

WHEREAS, Virginia law recognizes the authority of an agency of the Commonwealth to interpret the statutes under which it operates and that such interpretations, when reasonable, are accorded judicial deference;

NOW BE IT RESOLVED that the Virginia Marine Resources Commission Citizen Board hereby interprets the word “Commission” in Code § 28.2-1203.A.5.(iv) to authorize the Commissioner and staff appointed by him to determine whether piers, otherwise authorized to be placed without a Commission permit pursuant to Code § 28.2-1203.A.5, are navigational hazards, and

Notwithstanding, but in addition to, the foregoing, the Virginia Marine Resources Commission Citizen Board hereby delegates to the Commissioner, and authorizes him to further sub-delegate to staff appointed by him, the task of determining whether piers,

otherwise authorized to be placed without permit pursuant to Code § 28.2-1203.A.5, are navigational hazards, and

In so interpreting and delegating the aforesaid authority, the Virginia Marine Resources Commission Citizen Board is mindful that Code § 62.1-164 sets out a private judicial remedy for citizens who nevertheless may believe that a private pier or landing obstructs the navigation of a watercourse, and that Code § 2.2-4025.A(v) exempts from judicial review under the Administrative Process Act (“APA”), Code § 2.2-4000, *et seq.*, those “matters subject by law to a trial de novo in any Court.”

In so interpreting and delegating the aforesaid authority, the Virginia Marine Resources Commission Citizen Board recognizes that, through necessity and customary practice over time, the Commissioner and the staff appointed by him, perform, and have performed, some other tasks addressed to the “Commission” in Code Title 28. Nothing herein is intended to disapprove such actions, retroactively or prospectively, which has customarily developed over time as a matter of necessity or practicality. Rather, this Resolution is intended to clarify a current matter, arising from the enactment of Chapter 973, for the further guidance of the Commissioner and staff appointed by him and for the information of citizens.