

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 681

An Act to amend and reenact § 32.1-164.5 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 32.1-164.6 and 32.1-164.7, relating to land application of sewage sludge; study; report.

[S 1088]

Approved March 19, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-164.5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 32.1-164.6 and 32.1-164.7 as follows:

§ 32.1-164.5. Land application, marketing and distribution of sewage sludge; regulations.

A. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the State Water Control Board or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.

B. The Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation, shall promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing or distribution is properly treated or stabilized, (ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect public health and the environment, and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, will be prevented.

C. Regulations promulgated by the Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation pursuant to subsection B of this section, shall include:

1. Requirements and procedures for the issuance and amendment of permits as required by this section;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;

5. Required procedures for land application, marketing and distribution of sewage sludge;

6. Requirements for sampling, analysis, record keeping and reporting in connection with land application, marketing and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 32.1-164.2 and 62.1-44.15:3;

8. ~~Conditions where a Requirements for site-specific nutrient management plan approved by the Department of Conservation and Recreation may be required:~~ *plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land applied, and requirements for approval of nutrient management plans by the Department of Conservation and Recreation prior to permit issuance under specific conditions, including but not limited to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, and sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate; and*

9. *Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the State Department of Health and to the local governing body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the current and preceding calendar year, which shall include information detailing each complaint and how it was resolved.*

D. The Board of Health shall adopt regulations in accordance with this section not later than October 1, 1994. The Board of Health may adopt, as final, proposed regulations that were the subject of public

notice and for which one or more public hearings or informational meetings were held in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) after July 1, 1993, and prior to September 30, 1994. Where, because of site-specific conditions identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application and time of day restrictions exceeding those required by the regulations promulgated under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions. Should the permit applicant object to the inclusion of any such condition, the approval of the Commissioner shall be required before the condition objected to may be included in the permit.

E. The Board may adopt regulations prescribing a reasonable fee not to exceed \$2,500 to be charged for the direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage sludge pursuant to this section.

F. There is hereby established in the treasury a special fund to be known as the Sludge Management Permit Fee Fund, hereinafter referred to as the fund. The fees required by this section shall be transmitted to the Comptroller to be deposited into the fund. The income and principal of the fund shall be used only and exclusively for the direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage sludge. The State Treasurer shall be the custodian of the moneys deposited in the fund. No part of the fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

G. ~~Any permit, certificate or authorization for the land application, marketing or distribution of sewage sludge issued prior to October 1, 1994, shall remain in effect for the remainder of the term specified in such permit, certificate or authorization. Such permits, certificates and authorizations may be amended in accordance with the Administrative Process Act (2.2-4000 et seq.). Any amendment after the adoption of the regulations specified in this section shall be in accordance with such regulations. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Department written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury and property damages resulting from the transportation, storage or land application of sewage sludge. The Board of Health shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.~~

§ 32.1-164.6. Certification of Sewage Sludge Land Applicators.

A. The Board, with the assistance of the State Department of Health, Department of Environmental Quality and Department of Professional and Occupational Regulation shall promulgate regulations and standards for training, testing and certification of persons land applying Class B sewage sludge in the Commonwealth, and for revoking, suspending or denying such certification from any person for cause. The regulations shall include standards and criteria for the approval of programs of instruction taught by governmental entities and by the private sector for the purpose of certifying sewage sludge land applicators. The Board shall promulgate the regulations and standards required by this subsection by no later than July 1, 2004.

B. No person shall land apply Class B sewage sludge pursuant to a permit under § 32.1-164.5 or § 62.1-44.19:3 unless a certified sewage sludge land applicator is onsite at all times during such land application, as of 180 days following the effective date of regulations required by this section.

§ 32.1-164.7. Local enforcement of sewage sludge regulations.

Any locality that has adopted an ordinance for the testing and monitoring of the land application of sewage sludge pursuant to § 62.1-44.19:3 shall have the authority to order the abatement of any violation of §§ 32.1-164.5, 32.1-164.6 or § 62.1-44.19:3 or of any violation of any regulation promulgated under those sections. Such abatement order shall identify the activity constituting the violation, specify the Code provision or regulation violated by the activity and order that the activity cease immediately.

In the event of any dispute concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the Department, whose decision shall be final and binding unless reversed on judicial appeal pursuant to § 2.2-4026. Any person who fails or refuses to halt such activity may be compelled to do so by injunction issued by a court having competent jurisdiction. Upon determination by the Department that there has been a violation §§ 32.1-164.5, 32.1-164.6 or § 62.1-44.19:3 or of any regulation promulgated under those sections and that such violation poses an imminent threat to public health, safety or welfare, the Commissioner shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation. Neither the Commissioner, the Commonwealth, nor any

employee of the Commonwealth shall be liable for failing to provide the notification required by this section.

2. That the State Department of Health shall review the July 2002 Report of the National Research Council titled "Biosolids Applied to Land: Advancing Standards and Practices," the June 2003 comment and response document prepared by the U.S. Environmental Protection Agency and the December 2003 recommendation by the U.S. Environmental Protection Agency for revisions to the federal regulations governing the land application of sewage sludge, as well as plans and recommendations developed by the U.S. Environmental Protection Agency in response to such report, and shall submit an executive summary and report its findings and recommendations to the Virginia State Board of Health and the General Assembly no later than June 30, 2004, as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The executive summary and the report shall be posted on the General Assembly's website. In developing its findings and recommendations, the Department shall request comments from other state agencies, local governments, and organizations and persons having an interest in the land application of sewage sludge. The report shall include any recommendations for revisions to current state laws and regulations governing the land application of sewage sludge that the Department deems necessary to ensure protection of public health and safety, the environment and natural resources, agricultural land and state waters. The Virginia State Board of Health shall initiate rulemaking proceedings pursuant to § 2.2-4007 no later than September 1, 2004, should the Board determine such proceedings are necessary to implement any such recommendations.