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HOUSE BILL NO. 2315

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 10.1-1402, 10.1-1402.1 and 62.1-44.15:6 of the Code of Virginia, as they are currently effective and as they will become effective, and to repeal the third enactment of Chapter 822 of the Acts of Assembly of 2002, relating to environmental permit fees.

Patron—Plum

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1402, and §§ 10.1-1402.1 and 62.1-44.15:6 of the Code of Virginia, as they are currently effective and as they will become effective, are amended and reenacted as follows:

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.
2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.
5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.
6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.
7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.
8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste which it deems to be hazardous.
9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.
10. Apply for federal funds and transmit such funds to appropriate persons.
11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.
12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.
13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.
14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste

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59 management facilities.

60 15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage
61 or disposal facility or any person transporting hazardous waste, permit ~~application~~ fees sufficient to
62 defray ~~only the~~ costs related to the issuance of permits as required in this chapter in accordance with
63 ~~Board regulations administering the hazardous waste program, including but not limited to, the costs of~~
64 ~~(i) overhead, (ii) reviewing and issuing permits, (iii) inspections, and (iv) enforcement,~~ but such fees
65 shall not exceed costs necessary to implement this subdivision. All fees received by the Board pursuant
66 to this subdivision shall be used exclusively for the hazardous waste management program set forth
67 herein.

68 16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for
69 the disposal, treatment or storage of nonhazardous solid waste, permit ~~application~~ fees sufficient to
70 defray ~~only the~~ costs related to the issuance of permits as required in this chapter in accordance with
71 ~~Board regulations administering the solid waste program, including but not limited to, the costs of (i)~~
72 ~~overhead, (ii) reviewing and issuing permits, (iii) inspections, and (iv) enforcement,~~ but such fees shall
73 not exceed costs necessary to ~~issue such permits administer the program.~~ All such fees received by the
74 Board shall be used exclusively for the solid waste management program set forth herein. The Board
75 shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and
76 10.1-1402.3.

77 17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in
78 accordance with this chapter.

79 18. Make separate orders and regulations it deems necessary to meet any emergency to protect public
80 health, natural resources and the environment from the release or imminent threat of release of waste.

81 19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid
82 or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly
83 managed and to institute legal proceedings to recover the costs of the containment or clean-up activities
84 from the responsible parties.

85 20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste
86 laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the
87 purpose of responding to solid or hazardous waste incidents and clean-up of sites which have been
88 improperly managed, including sites eligible for a joint federal and state remedial project under the
89 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law
90 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law
91 99-499, and for investigations to identify parties responsible for such mismanagement.

92 21. Abate hazards and nuisances dangerous to public health, safety or the environment, both
93 emergency and otherwise, created by the improper disposal, treatment, storage, transportation or
94 management of substances within the jurisdiction of the Board.

95 22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed
96 radioactive waste.

97 § 10.1-1402.1. (Effective until July 1, 2004) Permit fee regulations.

98 Regulations promulgated by the Board that establish a permit fee assessment and collection system
99 pursuant to subdivisions 15 and 16 of § 10.1-1402 shall be governed by the following:

100 1. Permit fees charged an applicant shall reflect ~~the average time and complexity of processing a~~
101 ~~permit in each of the various categories of permits and permit actions the costs of administering the~~
102 ~~program, including but not limited to, the costs of (i) overhead, (ii) reviewing and issuing permits, (iii)~~
103 ~~inspections, and (iv) enforcement.~~

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

107 3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall
108 evaluate the implementation of the permit fee program and provide this evaluation in writing to the
109 Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House
110 Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance. This
111 evaluation shall include a report on the total fees collected, the amount of general funds allocated to the
112 Department, the Department's use of the fees and the general funds, the number of permit applications
113 received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness
114 of permit processing.

115 4. Fees collected pursuant to subdivisions 15 and 16 of ~~§ 10.1-1402~~ shall not supplant or reduce in
116 any way the general fund appropriation to the Board.

117 5. These permit fees shall be collected in order ~~The Board shall establish a permit fee schedule for~~
118 ~~solid and hazardous waste management facilities sufficient to recover a portion of the agency's costs~~
119 ~~associated with the processing of an application to issue, reissue, amend or modify permits which the~~
120 ~~Board has authority to issue for the purpose of more efficiently and expeditiously processing permits~~

with administration of these programs. Such a permit fee schedule shall be effective by July 15, 2003. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

6. The Board shall promulgate regulations establishing a fee schedule sufficient to cover no more than twenty percent of the direct cost of the hazardous and solid waste management programs based on allocations made to these programs in the 2002 Appropriation Act; however, no individual permit fee shall increase more than 300 percent of the fee in existence on July 1, 2002.

§ 10.1-1402.1. (Effective July 1, 2004) Permit fee regulations.

Regulations promulgated by the Board which establish a permit fee assessment and collection system pursuant to subdivision 16 of § 10.1-1402 shall be governed by the following:

1. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions the costs of administering the program, including but not limited to, the costs of (i) overhead, (ii) reviewing and issuing permits, (iii) inspections, and (iv) enforcement.

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

3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

4. Fees collected pursuant to subdivision 16 of § 10.1-1402 shall not supplant or reduce in any way the general fund appropriation to the Board.

5. These permit fees shall be collected in order *The Board shall establish a permit fee schedule for solid and hazardous waste management facilities sufficient to recover a portion of the agency's costs associated with the processing of an application to issue, reissue, amend or modify permits which the Board has authority to issue for the purpose of more efficiently and expeditiously processing permits with administration of these programs. Such a permit fee schedule shall be effective by July 15, 2003.* The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

§ 62.1-44.15:6. (Effective until July 1, 2004) 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 administration of the permit programs, which the Board has authority to issue implement 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.

B. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions *The Board shall establish a permit fee schedule for water permits issued under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title that is sufficient to recover the agency's costs associated with administration of these programs, including but not limited to, the costs of (i) overhead, (ii) reviewing and issuing permits, (iii) inspections, (iv) enforcement, (v) water quality planning, (vi) water quality assessment, (vii) operations coordination, and (viii) surface water and ground water investigations. Such permit fee schedule shall be effective by July 15, 2003.* 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 sponsored dredging projects; and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
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1. Virginia Pollutant Discharge Elimination System	
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Major	\$24,000
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Minor	\$10,500
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182	General	\$ 1,200
183	2. Virginia Pollution Abatement	
184	Industrial/Wastewater	\$15,000
185	Industrial/Sludge	\$ 7,500
186	Municipal/Wastewater	\$15,000
187	Municipal/Sludge	\$ 7,500
188	Other	\$ 750
189	3. 401 Certification/Virginia Water Protection	
190	Individual	\$ 9,000
191	General	\$ 1,200
192	4. Ground Water Withdrawal	\$ 6,000
193	5. Surface Water Withdrawal	\$12,000

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195 When modifications in these permits or certificates have been initiated by the Board, the fee for the
196 modified permit or certificate shall not exceed seventy-five percent of the maximum amount established
197 by this subsection. Payments for the costs of processing applications by the Department of Game and
198 Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of
199 twenty-five percent of the fees prescribed by regulation or \$100 per permit or certificate and shall
200 further be limited to those permits or certificates these agencies are required to review by the Code of
201 Virginia.

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

205 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board
206 shall make a report on the implementation of the water permit program to the Senate Committee on
207 Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House
208 Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources
209 and the House Committee on Finance. The report shall include the following: (i) the total costs, both
210 direct and indirect, including the costs of overhead, water quality planning, water quality assessment,
211 operations coordination, and surface water and ground water investigations, (ii) the total fees collected
212 by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal
213 funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number
214 of permit applications received by category, (vii) the number of permits issued by category, (viii) the
215 progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and
216 indirect costs to neighboring states of administering their water permit programs, including what
217 activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders
218 and applicants.

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

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

224 G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees
225 for facilities that have established a record of compliance with the terms and requirements of their
226 permits.

227 § 62.1-44.15:6. (Effective July 1, 2004) Permit fee regulations.

228 A. The Board shall promulgate regulations establishing a fee assessment and collection system to
229 recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and
230 the Department of Conservation and Recreation's direct and indirect costs associated with the processing
231 of an application to issue, reissue, amend or modify any permit or certificate administration of the
232 permit programs, which the Board has authority to issue implement under this chapter and Chapters 24
233 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title; from the applicant for such permit or
234 certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be
235 exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board
236 shall have no authority to charge such fees where the authority to issue such permits has been delegated
237 to another agency which imposes permit fees.

238 B. Permit fees charged an applicant shall reflect the average time and complexity of processing a
239 permit in each of the various categories of permits and permit actions The Board shall establish a
240 permit fee schedule for water permits issued under this chapter and Chapters 24 (§ 62.1-242 et seq.)
241 and 25 (§ 62.1-254 et seq.) of this title that is sufficient to recover the agency's costs associated with
242 administration of these programs, including but not limited to, the costs of (i) overhead, (ii) reviewing

and issuing permits, (iii) inspections, (iv) enforcement, (v) water quality planning, (vi) water quality assessment, (vii) operations coordination, and (viii) surface water and ground water investigations. Such permit fee schedule shall be effective by July 15, 2003. 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 sponsored dredging projects; and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major	\$ 8,000
Minor	\$ 3,500
General	\$ 400
2. Virginia Pollution Abatement	
Industrial/Wastewater	\$ 5,000
Industrial/Sludge	\$ 2,500
Municipal/Wastewater	\$ 5,000
Municipal/Sludge	\$ 2,500
Other	\$ 250
3. 401 Certification/Virginia Water Protection	
Individual	\$ 3,000
General	\$ 400
Waiver	\$ 400
4. Ground Water Withdrawal	\$ 2,000
5. Surface Water Withdrawal	\$ 4,000

When modifications in these permits or certificates have been initiated by the Board, the fee for the modified permit or certificate shall not exceed seventy-five percent of the maximum amount established by this subsection. Payments for the costs of processing applications by the Department of Game and Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of twenty-five percent of the fees prescribed by regulation or \$100 per permit or certificate and shall further be limited to those permits or certificates these agencies are required to review by the Code of Virginia.

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

D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Conservation and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, ~~the general funds,~~ and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

In addition, the 1998 report shall include an analysis and estimate of the annual costs to permit holders and permit applicants if the direct and indirect costs of administering the water permit program were to be apportioned in a manner that would require the permit holders and applicants to pay fifty, seventy-five, and one hundred percent of the program's total cost through annual permit fees. The Department shall propose how the following factors could be used to adjust individual permit fees: (i) the average time and complexity of processing a permit in each of the various categories of permits and permit actions, (ii) the permit holder's compliance history, (iii) whether the permit holder has implemented pollution prevention plans, (iv) whether the applicant or permit holder has used innovative technology and (v) the financial hardship of the applicant or permit holder.

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

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

306 G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees
307 for facilities which have established a record of compliance with the terms and requirements of their
308 permits.

309 **2. That the third enactment of Chapter 822 of the Acts of Assembly of 2002 is repealed.**