

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 396

An Act to amend and reenact §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia, relating to the testing of sewage sludge at permitted sites.

[H 2073]

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia are amended and reenacted as follows:

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

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. Requirements for site-specific nutrient management 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. 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. 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.

H. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a certified laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

§ 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit; ordinances; fees.

A. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit issued by the Board.

B. 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 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.

C. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

D. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a certified laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

E. Not later than January 1, 2003, the Board of Health shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under subsection B, in counties, cities or towns that have adopted ordinances in accordance with subsection C. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department of Health as provided for by regulation. The fee shall not exceed the amount necessary to reimburse the direct costs for a reasonable amount of testing and for the monitoring of the land application of sewage sludge by counties, cities and towns that have adopted such ordinances. The fee shall be imposed on each dry ton of sewage sludge that is land applied in such counties, cities and towns in accordance with the regulations adopted by the Board of Health. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department of Health;
2. Retention of proceeds in a special nonreverting fund to be administered by the Department of Health; and
3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge, as provided for in this subsection.