

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 705

An Act to amend the Code of Virginia by adding in Chapter 11.1 of Title 10.1 an article numbered 1.1, consisting of sections numbered 10.1-1187.1 through 10.1-1187.7, relating to the establishment of the Virginia Environmental Excellence Program.

[S 1088]

Approved March 24, 2005

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11.1 of Title 10.1 an article numbered 1.1, consisting of sections numbered 10.1-1187.1 through 10.1-1187.7, as follows:

Article 1.1.

Virginia Environmental Excellence Program.

§ 10.1-1187.1. Definitions.

"Board or Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Environmental Management System" means a comprehensive, cohesive set of documented policies and procedures adopted by a facility or person and used to establish environmental goals, to meet and maintain those goals, to evaluate environmental performance and to achieve measurable or noticeable improvements in environmental performance, through planning, documented management and operational practices, operational changes, self assessments, and management review. The term shall include, but not be limited to, any such system developed in accordance with the International Standards of Operation 14001 standards.

"E2" means an environmental enterprise.

"E3" means an exemplary environmental enterprise.

"E4" means an extraordinary environmental enterprise.

"Facility" means a manufacturing, business, agricultural, or governmental site or installation involving one or more contiguous buildings or structures under common ownership or management.

"Record of sustained compliance" means that the person or facility (i) has no judgment or conviction entered against it, or against any key personnel of the person or facility or any person with an ownership interest in the facility for a criminal violation of environmental protection laws of the United States, the Commonwealth, or any other state in the previous five years; (ii) has been neither the cause of, nor liable for, more than two significant environmental violations in the previous three years; (iii) has no unresolved notices of violations or potential violations of environmental requirements with the Department or one of the Boards; (iv) is in compliance with the terms of any order or decree, executive compliance agreement, or related enforcement measure issued by the Department, one of the Boards, or the U.S. Environmental Protection Agency; and (v) has not demonstrated in any other way an unwillingness or inability to comply with environmental protection requirements.

§ 10.1-1187.2. Virginia Environmental Excellence Program established.

The Department may establish programs to recognize facilities and persons that have demonstrated a commitment to enhanced environmental performance and to encourage innovations in environmental protection.

§ 10.1-1187.3. Program categories and criteria.

A. The Director shall establish different categories of participation and the criteria and benefits for each category. Such categories shall include, but not be limited to: (i) E2 facilities, (ii) E3 facilities, and (iii) E4 facilities.

B. In order to participate as an E2 facility, a person or facility shall demonstrate that it (i) is developing an environmental management system or has initiated implementation of an environmental management system, (ii) has a commitment to pollution prevention and a plan to reduce environmental impacts from its operations, and (iii) has a record of sustained compliance with environmental requirements. To apply to become an E2 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality, (b) an evaluation of the applicant's environmental impacts, (c) the applicant's objectives and targets for addressing significant environmental impacts, and (d) a description of the applicant's pollution prevention program. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E2 facilities may include, but are not limited to, the following: public recognition of facility performance and reduced fees.

C. In order to participate as an E3 facility, a person or facility shall demonstrate that it has (i) a fully-implemented environmental management system, (ii) a pollution prevention program with documented results, and (iii) a record of sustained compliance with environmental requirements. To apply to become an E3 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality; (b) an evaluation of the applicant's actual and potential environmental impacts; (c) the applicant's objectives and targets for addressing significant environmental impacts; (d) a description of the applicant's pollution prevention program; (e) identification of the applicant's environmental legal requirements; (f) a description of the applicant's environmental management system that identifies roles, responsibilities and authorities, reporting and record-keeping, emergency response procedures, staff training, monitoring, and corrective action processes for noncompliance with the environmental management system; (g) voluntary self-assessments; and (h) procedures for internal and external communications. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E3 facilities may include, but are not limited to, the following: public recognition of facility performance, reduced fees, reduced inspection priority, a single point-of-contact between the facility and the Department, streamlined environmental reporting, reduced monitoring requirements, prioritized permit and permit amendment review, and the ability to implement alternative compliance measures approved by the appropriate Board in accordance with § 10.1-1187.6.

D. In order to participate as an E4 facility, a person or facility shall meet the criteria for participation as an E3 facility, and shall have (i) implemented and completed at least one full cycle of an environmental management system as verified by an unrelated third-party qualified to audit environmental management systems and (ii) committed to measures for continuous and sustainable environmental progress and community involvement. To apply to become an E4 facility, an applicant shall submit (a) the information required to apply to become an E3 facility, (b) documentation evidencing implementation and completion of at least one full cycle of an environmental management system and evidencing review and verification by an unrelated third party, and (c) documentation that the applicant has committed to measures for continuous and sustainable environmental progress and community involvement. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E4 facilities may include all of the incentives available to E3 facilities. Any facility or person that has been accepted into the National Performance Track Programs by the U.S. Environmental Protection Agency shall be deemed to be an E4 facility. If acceptance in the Program is revoked or suspended by the U.S. Environmental Protection Agency, participation as an E4 facility shall also be terminated or suspended.

§ 10.1-1187.4. Procedures for participation.

A. The Director shall develop guidelines and procedures for implementation of the program, including procedures for submitting applications, guidelines for annual reports from participating persons or facilities, and procedures for reviewing program implementation.

B. Upon review of an application, the Director may approve or deny the person's or facility's participation in the appropriate category within the Virginia Environmental Excellence Program. The denial of a person's or facility's participation in the Virginia Environmental Excellence Program shall not be with prejudice or otherwise prevent reapplication by the person or facility. If a participant fails to maintain a record of sustained compliance, fails to resolve an alleged environmental violation within 180 days, or fails to meet the requirements or criteria for participation in the Virginia Environmental Excellence Program or any category within the program, the Director may revoke or suspend their participation in the program or revoke participation in a higher level and approve its participation in a lower level of the program. The Director shall provide reasonable notice of the reasons for the suspension or revocation and allow the participant to respond prior to making such a decision.

C. The Director's decision to approve, deny, revoke, or suspend a person's or facility's participation in any category of the Virginia Environmental Excellence Program is discretionary, shall not be a case decision as defined in § 2.2-4001, and shall be exempt from judicial review.

§ 10.1-1187.5. Reporting.

A. Participants shall submit annual reports in a format and schedule prescribed by the Director, including information on environmental performance relevant to the program.

B. The Department shall submit a report to the Governor and to the members of the House Committee on Agriculture, Chesapeake and Natural Resources and the members of the Senate Committee on Agriculture, Conservation and Natural Resources by December 1 of every even-numbered year, with the last report due on December 1, 2010. The report shall include the information from the participants' reports as well as information on the incentives that have been provided and the innovations that have been developed by the agency and participants.

§ 10.1-1187.6. Approval of alternate compliance methods.

A. To the extent consistent with federal law and notwithstanding any other provision of law, the Air Pollution Control Board, the Waste Management Board, and the State Water Control Board may grant alternative compliance methods to the regulations adopted pursuant to their authorities, respectively,

under §§ 10.1-1308, 10.1-1402, and 62.1-44.15 for persons or facilities that have been accepted by the Department as meeting the criteria for E3 and E4 facilities under § 10.1-1187.3, including but not limited to changes to monitoring and reporting requirements and schedules, streamlined submission requirements for permit renewals, the ability to make certain operational changes without prior approval, and other changes that would not increase a facility's impact on the environment. Such alternative compliance methods may allow alternative methods for achieving compliance with prescribed regulatory standards, provided that the person or facility requesting the alternative compliance method demonstrates that the method will (i) meet the purpose of the applicable regulatory standard, (ii) promote achievement of those purposes through increased reliability, efficiency, or cost effectiveness, and (iii) afford environmental protection equal to or greater than that provided by the applicable regulatory standard. No alternative compliance method shall be approved that would alter an ambient air quality standard, ground water protection standard, or water quality standard and no alternative compliance method shall be approved that would increase the pollutants released to the environment, increase impacts to state waters, or otherwise result in a loss of wetland acreage.

B. Notwithstanding any other provision of law, an alternate compliance method may be approved under this section after at least 30 days' public notice and opportunity for comment, and a determination that the alternative compliance method meets the requirements of this section.

C. Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable federal law or other requirement necessary for the Commonwealth to obtain or retain federal delegation or approval of any regulatory program. Before approving an alternate compliance method affecting any such program, each Board may obtain the approval of the federal agency responsible for such delegation or approval. Any one of the Boards may withdraw approval of the alternate compliance method at any time if any conditions under which the alternate compliance method was originally approved change, or if the recipient has failed to comply with any of the alternative compliance method requirements.

D. Upon approval of the alternative compliance method under this section, the alternative compliance method shall be incorporated into the relevant permits as a minor permit modification with no associated fee. The permits shall also contain any such provisions that shall go into effect in the event that the participant fails to fulfill its obligations under the variance, or is removed from the program for reasons specified by the Director under subsection B of § 10.1-1187.4.

§ 10.1-1187.7. Governor's Environmental Excellence Awards.

The Governor's Environmental Excellence Awards shall be awarded each year to recognize participants in the Virginia Environmental Excellence Program that have demonstrated extraordinary leadership, innovation, and commitment to implementation of pollution prevention practices and other efforts to reduce environmental impacts and improve Virginia's natural environment.