

VIRGINIA ACTS OF ASSEMBLY -- 2005 RECONVENED SESSION

CHAPTER 920

An Act to amend and reenact §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia, relating to the siting of landfills.

[H 2192]

Approved April 6, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1408.4. Landfill siting review.

A. Before granting a permit which approves site suitability for a new municipal solid waste landfill, the Director shall determine, in writing, that the site on which the landfill is to be constructed is suitable for the construction and operation of such a landfill. In making his determination, the Director shall consider and address, in addition to such others as he deems appropriate, the following factors:

1. Based on a written, site-specific report prepared by the Virginia Department of Transportation, the adequacy of transportation facilities that will be available to serve the landfill, including the impact of the landfill on local traffic volume, road congestion, and highway safety;

2. The potential impact of the proposed landfill on parks and recreational areas, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism; and

3. The geologic suitability of the proposed site, including proximity to areas of seismic activity and karst topography.

The applicant shall provide such information on these factors as the Director may request.

B. In addition to such other types of locations as may be determined by the Board, no new municipal solid waste landfill shall be constructed:

1. In a 100-year flood plain;

2. In any tidal wetland or nontidal wetland contiguous to any surface water body, *except in accordance with § 10.1-1408.5*;

3. Within ~~five~~ *three* miles upgradient of any existing surface or groundwater public water supply intake or reservoir; ~~however in.~~ *However, a new municipal solid waste landfill may be constructed within a closer distance but no closer than one mile from any existing surface or groundwater public water supply intake or reservoir if: (i) the proposed landfill would meet all of the other requirements of this chapter and subtitle D of the federal Resource Conservation and Recovery Act, including alternative liner systems approved in accordance with that Act; (ii) the permit requires that groundwater protection standards be established and approved by the Director prior to the receipt of waste; (iii) the permit requires installation of at least two synthetic liners under the waste disposal areas and requires leachate collection systems to be installed above and below the uppermost liner; (iv) the permit requires all groundwater monitoring wells located within the facility's boundary and between the landfill and any water supply intake to be sampled quarterly and the results reported to the Department within 15 days of the owner or operator receiving the laboratory analysis; and (v) the proposed landfill meets any other conditions deemed necessary by the Director, in consultation with the Commissioner of Health, to protect against groundwater and surface water contamination. In the Counties of Mecklenburg and Halifax, a new municipal solid waste landfill may be exempt from the provisions of this subdivision and may be constructed within a shorter distance from an existing surface or groundwater public water supply intake or reservoir if the Director determines that such distance would not be detrimental to human health and the environment;*

4. In any area vulnerable to flooding resulting from dam failures;

5. Over a sinkhole or less than 100 feet above a solution cavern associated with karst topography;

6. In any park or recreational area, wildlife management area or area designated by any federal or state agency as the critical habitat of any endangered species; or

7. Over an active fault.

C. *There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to public water supplies, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.*

§ 10.1-1408.5. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this subsection shall not apply to *subsection B or* the (i) expansion of an existing municipal solid waste

landfill located in a city with a population between 41,000 and 52,500 when the owner or operator of the landfill is an authority created pursuant to § 15.2-5102 ~~which~~ *that* has applied for a permit under § 404 of the federal Clean Water Act prior to January 1, 1989, and the owner or operator has received a permit under § 404 of the federal Clean Water Act and § 62.1-44.15:5 of this Code, or (ii) construction of a new municipal solid waste landfill in any county with a population between 29,200 and 30,000, according to the 1990 United States Census, and provided that the municipal solid waste landfills covered under clauses (i) and (ii) have complied with all other applicable federal and state environmental laws and regulations. It is expressly understood that while the provisions of this section provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the project should receive the necessary environmental and regulatory permits to proceed. *For the purposes of this section, the term "expansion of a municipal solid waste landfill" shall include the siting and construction of new cells or the expansion of existing cells at the same location.*

B. The Director may issue a solid waste permit for the expansion of a municipal solid waste landfill located in a wetland only if the following conditions are met: (i) the proposed landfill site is at least 100 feet from any surface water body and at least one mile from any tidal wetland; (ii) the Director determines, based upon the existing condition of the wetland system, including, but not limited to, sedimentation, toxicity, acidification, nitrification, vegetation, and proximity to existing permitted waste disposal areas, roads or other structures, that the construction or restoration of a wetland system in another location in accordance with a Virginia Water Protection Permit approved by the State Water Control Board would provide higher quality wetlands; and (iii) the permit requires a minimum two-to-one wetlands mitigation ratio. This subsection shall not apply to the exemptions provided in clauses (i) and (ii) of subsection A.

C. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is within a mile of such a wetland, unless the Director determines that less frequent monitoring is necessary. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the Director. All results shall be reported to the Department of Environmental Quality.

Ⓢ D. This section shall not apply to landfills which impact less than ~~4.25~~ two acres of nontidal wetlands.

Ⓢ E. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

F. There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to wetlands, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.