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HOUSE BILL NO. 2624**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 4, 2005)

(Patron Prior to Substitute—Delegate Byron)

A BILL to amend and reenact §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia, relating to the injection of sewage sludge into the soil.

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

60 Department may incorporate in the permit at the time it is issued reasonable special conditions regarding
61 buffering, transportation routes, slope, material source, methods of handling and application and time of
62 day restrictions exceeding those required by the regulations promulgated under this section. Before
63 incorporating any such conditions into the permit, the Department shall provide written notice to the
64 permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the
65 additional requirements. The Department shall incorporate into the notice any written requests or
66 recommendations concerning such site-specific conditions submitted by the local governing body where
67 the land application is to take place. The permit applicant shall have at least 14 days in which to review
68 and respond to the proposed conditions. Should the permit applicant object to the inclusion of any such
69 condition, the approval of the Commissioner shall be required before the condition objected to may be
70 included in the permit.

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

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

81 G. All persons holding or applying for a permit authorizing the land application of sewage sludge
82 shall provide to the Department written evidence of financial responsibility, which shall be available to
83 pay claims for cleanup costs, personal injury and property damages resulting from the transportation,
84 storage or land application of sewage sludge. The Board of Health shall, by regulation, establish and
85 prescribe mechanisms for meeting the financial responsibility requirements of this section.

86 *H. Surface incorporation into the soil of sewage sludge applied to cropland may be required when*
87 *practicable and compatible with a soil conservation plan meeting the standards and specifications of the*
88 *U.S. Department of Agriculture Natural Resources Conservation Service.*

89 *I. The Board shall develop regulations specifying and providing for extended buffers to be employed*
90 *for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface*
91 *incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards*
92 *and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such*
93 *extended buffers may be included by the Department as site specific permit conditions pursuant to*
94 *subsection D, as an alternative to surface incorporation when necessary to protect odor sensitive*
95 *receptors as determined by the Department or the local monitor.*

96 § 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without
97 permit; ordinances; fees.

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

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

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

110 *D. Surface incorporation into the soil of sewage sludge applied to cropland may be required when*
111 *practicable and compatible with a soil conservation plan meeting the standards and specifications of the*
112 *U.S. Department of Agriculture Natural Resources Conservation Service.*

113 *E. The Board shall develop regulations specifying and providing for extended buffers to be employed*
114 *for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface*
115 *incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards*
116 *and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such*
117 *extended buffers may be included by the Department as site specific permit conditions pursuant to*
118 *subsection D of § 32.1-164.5, as an alternative to surface incorporation when necessary to protect odor*
119 *sensitive receptors as determined by the Department or the local monitor.*

120 F. Not later than January 1, 2003, the Board of Health shall adopt regulations requiring the payment
121 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.