

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 477

An Act to amend and reenact § 10.1-1454.1 of the Code of Virginia, relating to the requirements for containers carrying nonhazardous solid waste on Virginia waters.

[S 82]

Approved March 31, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1454.1 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-1454.1. Regulation of wastes transported by water.

A. The Board shall develop regulations governing the commercial transport, loading and off-loading of nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth as are necessary to protect the health, safety, and welfare of the citizens of the Commonwealth and to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction. Included in the regulations shall be provisions governing (i) the issuance of permits by rule to facilities receiving nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth and (ii) to the extent allowable under federal law and regulation, the commercial transport of nonhazardous solid wastes (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste upon the navigable waters of the Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such waste. ~~Also included~~

B. 1. *Included* in the regulations shall be requirements, to the extent allowable under federal law, that: (a) containers holding wastes be watertight and be designed, constructed, secured and maintained so as to prevent the escape of wastes, liquids and odors and to prevent the loss or spillage of wastes in the event of an accident; (b) containers be tested at least two times a year and be accompanied by a certification from the container owner that such testing has shown that the containers are watertight; (c) each container be listed on a manifest designed to assure that the waste being transported in each container is suitable for the destination facility; and (d) containers be secured to the barges to prevent accidents during transportation, loading and unloading.

2. *For the purposes of this section and the regulations promulgated hereunder, a container shall satisfy clauses (a) and (b) of subdivision B 1, if it meets the following requirements:*

a. *Each container shall be certified for special service by a Delegated Approval Authority approved by the U.S. Coast Guard in accordance with 49 CFR Parts 450 through 453 as having met the requirements for the approval of prototype containers described in §§ 1.5 and 1.17.2 of the Rules for Certification of Cargo Containers, 1998, American Bureau of Shipping, including a special container prototype test as follows: a minimum internal head of three inches of water shall be applied to all sides, seams, bottom and top of the container for at least 15 minutes of each side, seam, bottom and top, during which the container shall remain free from the escape of water.*

b. *Each container shall be certified by the Delegated Approval Authority as having passed the following test when the container is placed in service and at least once every six months thereafter while it remains in service:*

(1) *Each container shall have a minimum internal head of 24 inches of water applied to the container in an upright position for at least 15 minutes during which the container shall remain free from the escape of water. All wastewater and contaminated water resulting from this test procedure shall be disposed of in compliance with the applicable regulations of the State Water Control Board.*

(2) *Each container shall be visually inspected for damage on all sides, plus the top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.*

c. *Following each unloading of solid waste from a container, each container shall be visually inspected, as practical, at the solid waste management facility immediately upon unloading for damage on all sides, plus top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.*

3. *It shall be a violation of this chapter if during transportation, holding, or storage operations, or in the event of an accident, there is an: (i) entry of liquids into a container; (ii) escape, loss, or spillage of wastes or liquids from a container; or (iii) escape of odors from a container.*

B C. A facility utilized to receive nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, or regulated medical waste from a ship, barge or other vessel regulated pursuant to subsection A, arriving at the facility upon the navigable waters of the Commonwealth, is a solid waste management facility and is subject to the requirements of this chapter. On and after the effective date of the regulations promulgated under subsection A, no new or existing facilities shall receive any wastes regulated under subsection A from a ship, barge or other vessel without a permit issued in accordance with the Board's regulations.

C D. 1. The Board shall, by regulation, establish a fee schedule, payable by the owner or operator of any ship, barge or other vessel carrying, loading or off-loading waste regulated under this article on the navigable waters of the Commonwealth, for the purpose of funding the administrative and enforcement costs of this article associated with such operations including, but not limited to, the inspection and monitoring of such ships, barges or other vessels to ensure compliance with this article, and for funding activities authorized by this section to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

2. The owner or operator of a facility permitted to receive wastes regulated under this article from a ship, barge or other vessel shall be assessed a permit fee in accordance with the criteria set forth in § 10.1-1402.1. However, such fees shall also include an additional amount to cover the Department's costs for facility inspections that it shall conduct on at least a quarterly basis.

3. The fees collected pursuant to this article shall be deposited into a separate account within the Virginia Waste Management Board Permit Program Fund (§ 10.1-1402.2) and shall be treated as are other moneys in that fund except that they shall only be used for the purposes of this article, and for funding purposes authorized by this article to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

D E. The Board shall promulgate regulations requiring owners and operators of ships, barges and other vessels transporting wastes regulated under this article to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Regulations governing the amount of any financial responsibility required shall take into consideration: (i) the risk of potential damage or injury to state waters and the impairment of beneficial uses that may result from spillage or leakage from the ship, barge or vessel; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or interference with general health, welfare and property that may result.

E F. The owner or operator of a ship, barge or other vessel from which there is spillage or loss to state waters of wastes subject to regulations under this article shall immediately report such spillage or loss in accordance with the regulations of the Board and shall immediately take all such actions as may be necessary to contain and remove such wastes from state waters.

F G. No person shall transport wastes regulated under this article on the navigable waters of the Commonwealth by ship, barge or other vessel unless such ship, barge or vessel and the containers carried thereon are designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of an accident. A violation of this subsection shall be a Class 1 misdemeanor. For the purposes of this subsection, the term "odors" means any emissions that cause an odor objectionable to individuals of ordinary sensibility.

G H. The Director may grant variances for the commercial transport, loading, and off-loading of solid waste on waters of the Commonwealth from the requirements of this section provided: (i) travel on state waters is minimized; (ii) the solid waste is easily identifiable, is not hazardous, and is containerized so as to prevent the escape of liquids, waste, and odors; (iii) the containers are secured to the vessel to prevent spillage; (iv) the amount of solid waste transported does not exceed 300 tons annually; and (v) the activity will not occur when weather conditions pose a risk of the vessel losing its load.