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HOUSE BILL NO. 1134

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 32.1-164.5 of the Code of Virginia, relating to the Sludge Management Permit Fee Fund.

Patrons—Cline, Abbitt, Hogan and Valentine

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-164.5 of the Code of Virginia is amended and reenacted as follows:

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

A. 1. 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.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge by the State Health Commissioner, under a permit issued pursuant to § 32.1-164.3. Any person who engages in such activity shall be subject to the penalties provided in § 32.1-27. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The State Health Commissioner may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

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, 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

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HB1134

59 of sewage sludge, including the requirements that (i) holders of permits issued under this section shall
60 report all complaints received by them to the State Department of Health and to the local governing
61 body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints
62 concerning land application of sewage sludge shall notify the Department and the permit holder. The
63 Department shall maintain a searchable electronic database of complaints received during the current and
64 preceding calendar year, which shall include information detailing each complaint and how it was
65 resolved.

66 D. Where, because of site-specific conditions identified during the permit application review process,
67 the Department determines that special requirements are necessary to protect the environment or the
68 health, safety or welfare of persons residing in the vicinity of a proposed land application site, the
69 Department may incorporate in the permit at the time it is issued reasonable special conditions regarding
70 buffering, transportation routes, slope, material source, methods of handling and application and time of
71 day restrictions exceeding those required by the regulations promulgated under this section. Before
72 incorporating any such conditions into the permit, the Department shall provide written notice to the
73 permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the
74 additional requirements. The Department shall incorporate into the notice any written requests or
75 recommendations concerning such site-specific conditions submitted by the local governing body where
76 the land application is to take place. The permit applicant shall have at least 14 days in which to review
77 and respond to the proposed conditions. Should the permit applicant object to the inclusion of any such
78 condition, the approval of the Commissioner shall be required before the condition objected to may be
79 included in the permit.

80 E. The Board ~~may~~ shall adopt regulations prescribing a reasonable fee ~~not to exceed~~ \$2,500 to be
81 charged ~~for~~ to all permit holders to cover the costs of administration and management of the
82 Department's sewage sludge program, including but not limited to, (i) the costs of personnel to
83 investigate complaints and test and monitor sites where sewage sludge has been land applied, and (ii)
84 the direct and indirect costs associated with the processing of an application to issue, reissue, amend or
85 modify any permit to land apply, distribute or market sewage sludge pursuant to this section.

86 F. There is hereby established in the treasury a special fund to be known as the Sludge Management
87 Permit Fee Fund, hereinafter referred to as the fund. The fees required by this section shall be
88 transmitted to the Comptroller to be deposited into the fund. The income and principal of the fund shall
89 be used only and exclusively for the ~~direct and indirect costs associated with the processing of an~~
90 ~~application to issue, reissue, amend or modify any permit to land apply, distribute or market~~
91 *administration and management of the Department's sewage sludge program.* The State Treasurer shall
92 be the custodian of the moneys deposited in the fund. No part of the fund, either principal or interest
93 earned thereon, shall revert to the general fund of the state treasury.

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

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

106 I. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the
107 permit holder shall deliver or cause to be delivered written notification to the chief executive officer or
108 his designee for the local government where the site is located. The notice shall identify the location of
109 the permitted site and the expected sources of the sewage sludge to be applied to the site. This
110 requirement may be satisfied by providing a list of all available permitted sites in the locality at least
111 100 days prior to commencing the application at any site on the list. This requirement shall not apply to
112 any application commenced prior to October 10, 2005. If the site is located in more than one county,
113 the notice shall be provided to all jurisdictions where the site is located.

114 J. The Board and the Department, in consultation with the Department of Environmental Quality, the
115 Department of Conservation and Recreation, the Department of Agriculture and Consumer Services,
116 Virginia Polytechnic Institute and State University, and the Virginia Agricultural Extension Service, shall
117 establish and implement a program to train persons employed by those local governments that have
118 adopted ordinances, pursuant to § 62.1-44.19:3, to test and monitor the land application of sewage
119 sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia
120 Biosolids Use Regulations; (ii) land application methods and equipment, including methods and

121 processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain
122 of custody control; (iv) preparation and implementation of nutrient management plans for land
123 application sites; (v) complaint response and preparation of complaint and inspection reports; (vi)
124 enforcement authority and procedures, (vii) interaction and communication with the public; and (viii)
125 preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subdivision
126 H 3 of § 62.1-44.19:3. To the extent feasible, the program shall emphasize in-field instruction and
127 practical training. The completion of training shall not be a prerequisite to the exercise of authority
128 granted to local governments by any applicable provision of law.

129 The Department may:

130 1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and
131 providing facilities and instructors for the program. The fee shall be reimbursable from the fund
132 established pursuant to § 62.1-44.19:3; and

133 2. Request and accept the assistance and participation of other state agencies and institutions in
134 preparing and presenting the course of training established by this subsection.

135 K. Surface incorporation into the soil of sewage sludge applied to cropland may be required when
136 practicable and compatible with a soil conservation plan meeting the standards and specifications of the
137 U.S. Department of Agriculture Natural Resources Conservation Service.

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