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SENATE BILL NO. 651

Offered January 18, 2006

A BILL to amend and reenact §§ 10.1-1300, 10.1-1308, and 10.1-1322.3 of the Code of Virginia, relating to mercury emission controls.

Patrons—Puckett and McDougle

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1300, 10.1-1308 and 10.1-1322.3 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory Board" means the State Advisory Board on Air Pollution.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the State Air Pollution Control Board.

"Department" means the Department of Environmental Quality.

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

"EPA" means the United States Environmental Protection Agency.

"Owner" shall have no connotation other than that customarily assigned to the term "person," but shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Special order" means a special order issued under § 10.1-1309.

§ 10.1-1308. Regulations.

A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. No such regulation, shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. Any regulation requiring the use of stage 1 vapor recovery equipment at gasoline dispensing facilities may be applicable only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment for the pollutant ozone. For purposes of this section, gasoline dispensing facility means any site where gasoline is dispensed to motor vehicle tanks from storage tanks.

C. No state plan that imposes mercury emission controls that are (i) more stringent than the federal Clean Air Mercury Rule (the Rule) or (ii) imposed earlier than necessary for the Commonwealth to comply with the Rule shall be approved by the Board or submitted to the EPA. The Board shall not adopt any regulations, memoranda of understanding, or similar agreements seeking to implement such controls or to restrict the trading of mercury allowances in a manner that precludes a source's full participation in the EPA's national mercury trading program.

§ 10.1-1322.3. Emissions trading programs; emissions credits; Board to promulgate regulations.

A. In accordance with § 10.1-1308, the Board may promulgate regulations to provide for emissions trading programs to achieve and maintain the National Ambient Air Quality Standards established by the United States Environmental Protection Agency EPA, under the federal Clean Air Act. The regulations

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SB651

59 shall create an air emissions banking and trading program for the Commonwealth, to the extent not
60 prohibited by federal law, that results in net air emission reductions, creates an economic incentive for
61 reducing air emissions, and allows for continued economic growth through a program of banking and
62 trading credits or allowances. The regulations applicable to the electric power industry shall foster
63 competition in the electric power industry, encourage construction of clean, new generating facilities,
64 provide without charge new source set-asides of five percent for the first five plan years and two percent
65 per year thereafter, and provide an initial allocation period of five years. In promulgating such
66 regulations the Board shall consider, but not be limited to, the inclusion of provisions concerning (i) the
67 definition and use of emissions reduction credits or allowances from mobile and stationary sources, (ii)
68 the role of offsets in emissions trading, (iii) interstate or regional emissions trading, (iv) the mechanisms
69 needed to facilitate emissions trading and banking, and (v) the role of emissions allocations in emissions
70 trading. No regulations shall prohibit the direct trading of air emissions credits or allowances between
71 private industries, provided such trades do not adversely impact air quality in Virginia.

72 *B. For pollutants other than those regulated by the EPA pursuant to the National Ambient Air*
73 *Quality Standards, the Board shall promulgate regulations to provide for emissions trading programs to*
74 *the fullest extent permitted by federal law.*