

072550200

## HOUSE BILL NO. 2802

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 32.1-164.4 and 62.1-44.19:3 of the Code of Virginia, to amend the Code of Virginia by adding in Article 4 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:3.1 through 62.1-44.19:3.4, and to repeal §§ 32.1-164.2, 32.1-164.3, 32.1-164.5, 32.1-164.6, and 32.1-164.7 of the Code of Virginia, relating to regulation and management of the land application of sewage sludge.

Patrons—Byron, Abbitt, Putney, Valentine and Wittman; Senators: Newman and Quayle

Referred to Committee on Agriculture, Chesapeake and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-164.4 and 62.1-44.19:3 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 4 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:3.1 through 62.1-44.19:3.4 as follows:**

§ 32.1-164.4. Land disposal of septage in counties.

The land disposal of lime-stabilized septage and unstabilized septage shall be prohibited. However, until July 1, 1991, land spreading of lime-stabilized septage and shallow injection of unstabilized septage shall be allowed in counties, if prior approval is obtained from the board of supervisors and a permit has been obtained from the State Department of Health pursuant to § 32.1-164.3 in accordance with the Board of Health Regulations on Sewage Handling and Disposal Water Control Board pursuant to § 62.1-44.19:3.

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

A. 1. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit issued by the Board.

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 under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 this chapter. 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 Board may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

B. 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 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.

C. Any permit, certificate, or authorization for the land application, marketing or distribution of sewage sludge issued prior to January 1, 2008, shall remain in effect for the remainder of the term specified in such permit, certificate or authorization. Such permits, certificates, and authorizations may be amended in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Any amendment after the adoptions of the regulations specified in this section shall be in accordance with such regulations.

D. The Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, shall adopt 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.

E. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection C, shall include:

1. Requirements and procedures for the issuance and amendment of permits as required by this

INTRODUCED

HB2802

59 section;

60 2. Procedures for amending land application permits to include additional application sites and  
61 sewage sludge types;

62 3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or  
63 distribution;

64 4. Requirements for determining the suitability of land application sites and facilities used in land  
65 application, marketing or distribution of sewage sludge;

66 5. Required procedures for land application, marketing and distribution of sewage sludge;

67 6. Requirements for sampling, analysis, recordkeeping and reporting in connection with land  
68 application, marketing and distribution of sewage sludge;

69 7. Provisions for notification of local governing bodies to ensure compliance with §§ 62.1-44.15:3  
70 and 62.1-44.19:3.4;

71 8. Requirements for site-specific nutrient management plans, which shall be developed by persons  
72 certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is  
73 land applied, and requirements for approval of nutrient management plans by the Department of  
74 Conservation and Recreation prior to permit issuance under specific conditions, including but not  
75 limited to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in  
76 subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, as defined in § 62.1-44.17:1.1,  
77 and sites where the permit authorizes land application more frequently than once every three years at  
78 greater than 50 percent of the annual agronomic rate; and

79 9. Procedures for the prompt investigation and disposition of complaints concerning land application  
80 of sewage sludge, including the requirements that (i) holders of permits issued under this section shall  
81 report all complaints received by them to the Department and to the local governing body of the  
82 jurisdiction in which the complaint originates, and (ii) localities receiving complaints concerning land  
83 application of sewage sludge shall notify the Department and the permit holder. The Department shall  
84 maintain a searchable electronic database of complaints received during the current and preceding  
85 calendar year, which shall include information detailing each complaint and how it was resolved.

86 F. Where, because of site-specific conditions identified during the permit application review process,  
87 the Board determines that special requirements are necessary to protect the environment or the health,  
88 safety or welfare of persons residing in the vicinity of a proposed land application site, the Board may  
89 incorporate in the permit at the time it is issued reasonable special conditions regarding buffering,  
90 transportation routes, slope, material source, methods of handling and application, and time of day  
91 restrictions exceeding those required by the regulations promulgated under this section. Before  
92 incorporating any such conditions into the permit, the Board shall provide written notice to the permit  
93 applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the  
94 additional requirements. The Board shall incorporate into the notice any written requests or  
95 recommendations concerning such site-specific conditions submitted by the local governing body where  
96 the land application is to take place. The permit applicant shall have at least 14 days in which to  
97 review and respond to the proposed conditions. Should the permit applicant object to the inclusion of  
98 any such condition, the approval of the Board shall be required before the condition objected to may be  
99 included in the permit.

100 G. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and  
101 persons applying for permits and permit modifications pursuant to this section. All fees collected  
102 hereunder shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a  
103 permit shall be \$5,000. The fee for the reissuance, amendment or modification of a permit for an  
104 existing site shall not exceed \$1,000 and shall be charged only for permit actions initiated by the permit  
105 holder. Fees collected under this section shall be exempt from statewide indirect costs charged and  
106 collected by the Department of Accounts and shall not supplant or reduce the general fund  
107 appropriation to the Department.

108 H. There is hereby established in the treasury a special fund to be known as the Sludge Management  
109 Fund, hereinafter referred to as the Fund. The fees required by this section shall be transmitted to the  
110 Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only  
111 and exclusively for the Department's direct and indirect costs associated with the processing of an  
112 application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage  
113 sludge, as well as the administration and management of the Department's sewage sludge land  
114 application program. The State Treasurer shall be the custodian of the moneys deposited in the Fund.  
115 No part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the  
116 state treasury.

117 I. All persons holding or applying for a permit authorizing the land application of sewage sludge  
118 shall provide to the Department written evidence of financial responsibility, which shall be available to  
119 pay claims for cleanup costs, personal injury and property damages resulting from the transportation,  
120 storage or land application of sewage sludge. The Board shall, by regulation, establish and prescribe

*mechanisms for meeting the financial responsibility requirements of this section.*

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

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

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

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

*GN. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection D of § 32.1-164.5 F of § 62.1-44.19:3, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.*

*HO. Not later than January 1, 20032008, the Board of Health shall adopt regulations requiring the payment 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 CJ. 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.*

*P. The Board and the Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, Virginia Polytechnic Institute and State University, and the Virginia Agricultural Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures, (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subdivision O 3. To the extent feasible, the program shall emphasize in-field instruction and practical training. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any*

182 applicable provision of law.

183 The Department may:

184 1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and  
185 providing facilities and instructors for the program. The fee shall be reimbursable from the fund  
186 established pursuant to this section; and

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

189 § 62.1-44.19:3.1. Certification of Sewage Sludge Land Applicators.

190 A. The Board, with the assistance of the Department of Health, and the Department of Professional  
191 and Occupational Regulation shall adopt regulations and standards for training, testing and certification  
192 of persons land applying Class B sewage sludge in the Commonwealth, and for revoking, suspending or  
193 denying such certification from any person for cause. The regulations shall include standards and  
194 criteria for the approval of programs of instruction taught by governmental entities and by the private  
195 sector for the purpose of certifying sewage sludge land applicators. The Board shall promulgate the  
196 regulations and standards required by this subsection no later than July 1, 2008.

197 B. No person shall land apply Class B sewage sludge pursuant to a permit under §62.1-44.19:3  
198 unless a certified sewage sludge land applicator is onsite at all times during such land application, as  
199 of 180 days following the effective date of regulations required by this section.

200 § 62.1-44.19:3.2. Local enforcement of sewage sludge regulations.

201 Any locality that has adopted an ordinance for the testing and monitoring of the land application of  
202 sewage sludge pursuant to § 62.1-44.19:3 shall have the authority to order the abatement of any  
203 violation of § 62.1-44.19:3 or 62.1-44.19:3.1, or of any violation of any regulation promulgated under  
204 those sections. Such abatement order shall identify the activity constituting the violation, specify the  
205 Code provision or regulation violated by the activity and order that the activity cease immediately.

206 In the event of any dispute concerning the existence of a violation, the activity alleged to be in  
207 violation shall be halted pending a determination by the Department, whose decision shall be final and  
208 binding unless reversed on judicial appeal pursuant to § 2.2-4026. Any person who fails or refuses to  
209 halt such activity may be compelled to do so by injunction issued by a court having competent  
210 jurisdiction. Upon determination by the Department that there has been a violation of § 62.1-44.19:3 or  
211 62.1-44.19:3.1, or of any regulation promulgated under those sections and that such violation poses an  
212 imminent threat to public health, safety or welfare, the Board shall commence appropriate action to  
213 abate the violation and immediately notify the chief administrative officer of any locality potentially  
214 affected by the violation. Neither the Director, the Commonwealth, nor any employee of the  
215 Commonwealth shall be liable for failing to provide the notification required by this section.

216 § 62.1-44.19:3.3. Septage disposal.

217 The Board shall have the authority to issue permits that prescribe the terms and conditions upon  
218 which septage may be disposed of by land application. Application for disposal permits shall be  
219 submitted in form and content that are satisfactory to the Board. Upon receipt of a satisfactory  
220 application, the Board shall send a copy to the State Board of Health and shall comply with the  
221 provisions of § 62.1-44.14:3.4. The State Board of Health shall review the application without delay and  
222 advise the Board within 60 days of the requirements necessary to protect public health. The Board shall  
223 not consider the application complete until comments have been received from the State Board of  
224 Health. The Board shall approve or disapprove the application and issue the permit as appropriate. If  
225 the application is disapproved the Board shall advise the applicant of the conditions necessary to obtain  
226 approval. The Board may summarily revoke or amend the permit if it determines that the septage  
227 disposal is adversely affecting state waters or if the State Board of Health notifies the Board that public  
228 health is being adversely affected.

229 § 62.1-44.19:3.4. Notification of local governing bodies.

230 Whenever the Board receives an application for land disposal of treated sewage, stabilized sewage  
231 sludge or stabilized septage, the Board shall notify the local governing bodies where disposal is to take  
232 place of pertinent details of the proposal and establish a date for a public meeting to discuss technical  
233 issues relating to the proposal. The Board shall give notice of the date, time and place of the public  
234 meeting and a description of the proposal by publication in a newspaper of general circulation in the  
235 city or county where land disposal is to take place. Public notice of the scheduled meeting must occur  
236 no fewer than seven nor more than 14 days prior to the meeting. The Board shall not consider the  
237 application for land disposal to be complete until the public meeting has been held and comment has  
238 been received from the local governing body, or until 30 days have lapsed from the date of the public  
239 meeting. This section shall not apply to applications for septic tank permits.

240 2. That any person previously certified as a sewage sludge land applicator pursuant to § 32.1-164.6  
241 of the Code of Virginia as repealed by this act shall be deemed to be certified under this act.

242 3. That the State Board of Health's Biosolids Use Regulations (12 VAC 5-585) shall be transferred  
243 from the State Board of Health to the State Water Control Board on July 1, 2007, and the State

244 Water Control Board's initial rulemaking to implement this act shall be exempt from Article 2  
245 (§ 2.2-4006 et seq. of the Code of Virginia) of the Administrative Process Act. Such regulations  
246 that are in effect shall remain in full force and effect until altered, amended, or rescinded by the  
247 State Water Control Board.  
248 4. That, upon the effective date of this act, the administration and management of the Sludge  
249 Management Fund and the moneys in the Fund shall be transferred to the Department of  
250 Environmental Quality.  
251 5. That §§ 32.1-164.2, 32.1-164.3, 32.1-164.5, 32.1-164.6, and 32.1-164.7 of the Code of Virginia are  
252 repealed.