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HOUSE BILL NO. 3136

Offered January 18, 2007

A *BILL to amend and reenact §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia, relating to a moratorium on the sewage sludge permits.*

Patrons—Abbitt, Byron and Hogan

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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; 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. *Notwithstanding the provisions of this subsection, on and after January 1, 2008, no permit to land apply sewage sludge shall be issued to a contractor by the State Health Commissioner unless (i) the sewage sludge that is to be land applied has been generated by a sewage treatment works located in the same locality in which it is to be land applied and (ii) the Department certifies that the sewage sludge is being applied in a manner that protects public health and the environment and the Department of Conservation and Recreation certifies that the nutrient management plan protects the water quality.*

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

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59 to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in
60 subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, and sites where the permit
61 authorizes land application more frequently than once every three years at greater than 50 percent of the
62 annual agronomic rate; and

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

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

85 E. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and
86 persons applying for permits and permit modifications pursuant to this section. All fees collected
87 hereunder shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a
88 permit shall be \$5,000. The fee for the reissuance, amendment or modification of a permit for an
89 existing site shall not exceed \$1,000 and shall be charged only for permit actions initiated by the permit
90 holder. Fees collected under this section shall be exempt from statewide indirect costs charged and
91 collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation
92 to the Department.

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

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

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

113 I. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the
114 permit holder shall deliver or cause to be delivered written notification to the chief executive officer or
115 his designee for the local government where the site is located. The notice shall identify the location of
116 the permitted site and the expected sources of the sewage sludge to be applied to the site. This
117 requirement may be satisfied by providing a list of all available permitted sites in the locality at least
118 100 days prior to commencing the application at any site on the list. This requirement shall not apply to
119 any application commenced prior to October 10, 2005. If the site is located in more than one county,
120 the notice shall be provided to all jurisdictions where the site is located.

J. The Board and the Department, in consultation with the Department of Environmental Quality, 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 § 62.1-44.19:3, 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 H 3 of § 62.1-44.19:3. 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 applicable provision of law.

The Department may:

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

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

K. 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.

L. 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, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

§ 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. *Notwithstanding the provisions of this subsection, on and after January 1, 2008, no Virginia Pollutant Discharge Elimination System Permit to land apply sewage sludge shall be issued by the Board unless (i) the sewage sludge that is to be land applied has been generated by a sewage treatment works located in the same locality in which it is to be land applied and (ii) the Department certifies that the sewage sludge is being applied in a manner that protects public health and the environment and the Department of Conservation and Recreation certifies that the nutrient management plan protects the water quality.*

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. 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 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.

D. The Department, upon the timely request of any individual to test the sewage sludge at a specific

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

188 E. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the
189 permit holder shall deliver or cause to be delivered written notification to the chief executive officer or
190 his designee for the local government where the site is located. The notice shall identify the location of
191 the permitted site and the expected sources of the sewage sludge to be applied to the site. This
192 requirement may be satisfied by providing a list of all available permitted sites in the locality at least
193 100 days prior to commencing the application at any site on the list. This requirement shall not apply to
194 any application commenced prior to October 10, 2005. If the site is located in more than one county,
195 the notice shall be provided to all jurisdictions where the site is located.

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

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

206 H. Not later than January 1, 2003, the Board of Health shall adopt regulations requiring the payment
207 of a fee for the land application of sewage sludge, pursuant to permits issued under subsection B, in
208 counties, cities or towns that have adopted ordinances in accordance with subsection C. The person land
209 applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the
210 sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee
211 to the Department of Health as provided for by regulation. The fee shall not exceed the amount
212 necessary to reimburse the direct costs for a reasonable amount of testing and for the monitoring of the
213 land application of sewage sludge by counties, cities and towns that have adopted such ordinances. The
214 fee shall be imposed on each dry ton of sewage sludge that is land applied in such counties, cities and
215 towns in accordance with the regulations adopted by the Board of Health. The regulations shall include
216 requirements and procedures for:

217 1. Collection of fees by the Department of Health;

218 2. Retention of proceeds in a special nonreverting fund to be administered by the Department of
219 Health; and

220 3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns
221 with duly adopted ordinances providing for the testing and monitoring of the land application of sewage
222 sludge, as provided for in this subsection.