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SENATE BILL NO. 1339

Offered January 15, 2007

A BILL to amend and reenact § 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 through 32.1-164.7 of the Code of Virginia, relating to regulation and management of the land application of sewage sludge.

Patrons—Newman and Hawkins; Delegate: Byron

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:3 of the Code of Virginia is 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:

§ 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 3. 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.

4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

C B. 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, shall be prevented.

C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health 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, recordkeeping, 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 §§ 62.1-44.15:3 and 62.1-44.19:3.4;

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

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59 land applied, and approved by the Department of Conservation and Recreation prior to permit issuance
60 under specific conditions, including but not limited to, sites operated by an owner or lessee of a
61 Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry
62 Feeding Operation, as defined in § 62.1-44.17:1.1, sites where soils exhibit a high phosphorous level,
63 sites where the permit authorizes land application more frequently than once every three years at
64 greater than 50 percent of the annual agronomic rate, and other sites based on site-specific conditions
65 that increase the risk that land application may adversely impact water quality; and

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

73 D. Prior to issuance of a permit authorizing the land application, marketing or distribution of
74 sewage sludge, the Board shall consult with, and give full consideration to the written recommendations
75 of the Department of Health and the Department of Conservation and Recreation. Such consultation
76 shall include the public health risks and water quality impacts associated with the permitted activity.
77 The Department of Health and the Department of Conservation may submit written comments on
78 proposed permits within 45 days after notification by the Board. The Board shall assume that if written
79 comments are not submitted within this time period, the agencies have no comments on the proposed
80 permit.

81 E. Where, because of site-specific conditions, including soil type, identified during the permit
82 application review process, the Board determines that special requirements are necessary to protect the
83 environment or the health, safety or welfare of persons residing in the vicinity of a proposed land
84 application site, the Board may incorporate in the permit at the time it is issued reasonable special
85 conditions regarding buffering, transportation routes, slope, material source, methods of handling and
86 application, and time of day restrictions exceeding those required by the regulations adopted under this
87 section. Before incorporating any such conditions into the permit, the Board shall provide written notice
88 to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions
89 justifying the additional requirements. The Board shall incorporate into the notice any written requests
90 or recommendations concerning such site-specific conditions submitted by the local governing body
91 where the land application is to take place. The permit applicant shall have at least 14 days in which to
92 review and respond to the proposed conditions

93 F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and
94 persons applying for permits and permit modifications pursuant to this section. All fees collected
95 pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial
96 issuance of a permit shall be \$5,000. The fee for the reissuance, amendment, or modification of a permit
97 for an existing site shall not exceed \$1,000 and shall be charged only for permit actions initiated by the
98 permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged
99 and collected by the Department of Accounts and shall not supplant or reduce the general fund
100 appropriation to the Department.

101 G. There is hereby established in the treasury a special fund to be known as the Sludge Management
102 Fund, hereinafter referred to as the Fund. The fees required by this section shall be transmitted to the
103 Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only
104 and exclusively for the Department's direct and indirect costs associated with the processing of an
105 application to issue, reissue, amend, or modify any permit to land apply, distribute, or market sewage
106 sludge, the administration and management of the Department's sewage sludge land application
107 program, including but not limited to, monitoring and inspecting, the Department of Conservation and
108 Recreation's costs for implementation of the sewage sludge application program, and to reimburse
109 localities with duly adopted ordinances providing for the testing and monitoring of the land application
110 of sewage sludge. The State Treasurer shall be the custodian of the moneys deposited in the Fund. No
111 part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the state
112 treasury.

113 H. All persons holding or applying for a permit authorizing the land application of sewage sludge
114 shall provide to the Board written evidence of financial responsibility, which shall be available to pay
115 claims for cleanup costs, personal injury, and property damages resulting from the transportation,
116 storage or land application of sewage sludge. The Board shall, by regulation, establish and prescribe
117 mechanisms for meeting the financial responsibility requirements of this section.

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

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

128 EK. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the
 129 permit holder shall deliver or cause to be delivered written notification to the chief executive officer or
 130 his designee for the local government where the site is located. The notice shall identify the location of
 131 the permitted site and the expected sources of the sewage sludge to be applied to the site. This
 132 requirement may be satisfied by providing a list of all available permitted sites in the locality at least
 133 100 days prior to commencing the application at any site on the list. This requirement shall not apply to
 134 any application commenced prior to October 10, 2005. If the site is located in more than one county,
 135 the notice shall be provided to all jurisdictions where the site is located.

136 L. *The permit holder shall deliver or cause to be delivered written notification to the Department at
 137 least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice
 138 shall identify the location of the permitted site and the expected sources of the sewage sludge to be
 139 applied to the site.*

140 M. *No land application of sewage sludge shall be permitted unless a state or local official is present
 141 to inspect the application process unless waived by the Department. Such waiver shall be within the
 142 discretion of the Department. The Department shall use its best efforts to inspect each land application
 143 of sewage sludge as it is in progress to assure compliance with the requirements of this section,
 144 § 62.1-44.19:3.1, or regulations adopted under those sections. The Department shall not be required to
 145 inspect land applications of sewage sludge if such land application will be inspected by persons
 146 employed by local governments authorized to test and monitor the land application of sewage sludge
 147 pursuant to this section.*

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

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

158 HP. ~~Not later than January 1, 2003, the~~ *The Board of Health shall adopt regulations requiring the
 159 payment of a fee for the land application of sewage sludge, pursuant to permits issued under subsection
 160 B, in counties, cities or towns that have adopted ordinances in accordance with subsection C this
 161 section. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to
 162 the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator,
 163 and (iii) remit the fee to the Department of Health as provided for by regulation. The fee shall not
 164 exceed the amount necessary to reimburse the direct costs for a reasonable amount of testing and for the
 165 monitoring of the land application of sewage sludge by counties, cities and towns that have adopted
 166 such ordinances. The fee shall be imposed on each dry ton of sewage sludge that is land applied in such
 167 counties, cities and towns in accordance with the regulations adopted by the Board of Health the
 168 Commonwealth. The regulations shall include requirements and procedures for:*

- 169 1. Collection of fees by the Department of Health;
- 170 2. Retention of proceeds in a special nonreverting fund to be administered by the Department of
 171 Health *Deposit of the fees into the Fund;* and
- 172 3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns
 173 with duly adopted ordinances providing for the testing and monitoring of the land application of sewage
 174 sludge, as provided for in this subsection pursuant to subsection G.

175 Q. *The Department, in consultation with the Department of Health, the Department of Conservation
 176 and Recreation, the Department of Agriculture and Consumer Services, Virginia Polytechnic Institute
 177 and State University, and the Virginia Agricultural Extension Service, shall establish and implement a
 178 program to train persons employed by those local governments that have adopted ordinances, pursuant
 179 to this section, to test and monitor the land application of sewage sludge. The program shall include, at
 180 a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land
 181 application methods and equipment, including methods and processes for preparation and stabilization*

182 of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and
183 implementation of nutrient management plans for land application sites; (v) complaint response and
184 preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii)
185 interaction and communication with the public; and (viii) preparation of applications for reimbursement
186 of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall
187 emphasize in-field instruction and practical training. Persons employed by local governments shall
188 successfully complete such training before the local government may request reimbursement from the
189 Board for testing and monitoring of land application of sewage sludge performed by the person. The
190 completion of training shall not be a prerequisite to the exercise of authority granted to local
191 governments by any applicable provision of law.

192 The Department may:

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

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

198 § 62.1-44.19:3.1. Certification of Sewage Sludge Land Applicators.

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

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

209 § 62.1-44.19:3.2. Local enforcement of sewage sludge regulations.

210 A. Any locality that has adopted an ordinance for the testing and monitoring of the land application
211 of sewage sludge pursuant to § 62.1-44.19:3 shall have the authority to order the abatement of any
212 violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3, or of any violation of any regulation
213 adopted under these sections. Such abatement order shall identify the activity constituting the violation,
214 specify the Code provision or regulation violated by the activity, and order that the activity cease
215 immediately.

216 B. In the event of any dispute concerning the existence of a violation, the activity alleged to be in
217 violation shall be halted pending a determination by the Board, whose decision shall be final and
218 binding unless reversed on judicial appeal pursuant to § 2.2-4026. Any person who fails or refuses to
219 halt such activity may be compelled to do so by injunction issued by a court having competent
220 jurisdiction. Upon determination by the Board that there has been a violation of § 62.1-44.19:3,
221 62.1-44.19:3.1, or 62.1-44.19:3.3, or of any regulation adopted under these sections and that such
222 violation poses an imminent threat to public health, safety, or welfare, the Board shall commence
223 appropriate action to abate the violation and immediately notify the chief administrative officer of any
224 locality potentially affected by the violation. Neither the Board, the Commonwealth, nor any employee of
225 the Commonwealth shall be liable for failing to provide the notification required by this section.

226 C. Local governments shall promptly notify the Department of all results from the testing and
227 monitoring of the land application of sewage sludge performed by persons employed by local
228 governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3, or regulations
229 adopted under those sections, discovered by local governments.

230 § 62.1-44.19:3.3. Septage disposal.

231 The Board shall have the authority to issue permits that prescribe the terms and conditions upon
232 which septage may be disposed of by land application. Application for disposal permits shall be
233 submitted in form and content that are satisfactory to the Board. Upon receipt of a satisfactory
234 application, the Board shall send a copy to the State Board of Health and shall comply with the
235 provisions of § 62.1-44.19:3.4. The State Board of Health shall review the application without delay and
236 advise the Board within 60 days of the requirements necessary to protect public health. The Board shall
237 not consider the application complete until comments have been received from the State Board of
238 Health. The Board shall approve or disapprove the application and issue the permit as appropriate. If
239 the application is disapproved the Board shall advise the applicant of the conditions necessary to obtain
240 approval. The Board may summarily revoke or amend the permit if it determines that the septage
241 disposal is adversely affecting state waters or if the State Board of Health notifies the Board that public
242 health is being adversely affected.

243 § 62.1-44.19:3.4. Notification of local governing bodies.

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

254 **2. That the provisions of this act shall become effective on July 1, 2008, and shall not become**
 255 **effective unless adequate funds have been appropriated to administer the program and adequate**
 256 **positions have been authorized by this date.**

257 **3. That any person previously certified as a sewage sludge land applicator pursuant to § 32.1-164.6**
 258 **of the Code of Virginia as repealed by this act shall be deemed to be certified under this act until**
 259 **such certification expires or is revoked by the State Water Control Board.**

260 **4. That any permit, certificate, or authorization for the land application, marketing, or distribution**
 261 **of sewage sludge issued prior to July 1, 2008, shall remain in effect for the remainder of the term**
 262 **specified in such permit, certificate, or authorization unless amended or revoked by the Board.**

263 **5. That the State Board of Health's Biosolids Use Regulations (12 VAC 5-585) shall be transferred**
 264 **from the State Board of Health to the State Water Control Board on July 1, 2007, and the State**
 265 **Water Control Board's initial rulemaking to implement this act shall be exempt from Article 2**
 266 **(§ 2.2-4006 et seq. of the Code of Virginia) of the Administrative Process Act. Such regulations**
 267 **that are in effect shall remain in full force and effect until altered, amended, or rescinded by the**
 268 **State Water Control Board.**

269 **6. That, upon the effective date of this act, the administration and management of the Sludge**
 270 **Management Fund and the moneys in the Fund shall be transferred to the Department of**
 271 **Environmental Quality.**

272 **7. That upon the effective date of this act, the fee imposed on each dry ton of sewage sludge that**
 273 **is land applied pursuant to subsection P of § 62.1-44.19:3 shall be \$7.50 until altered, amended or**
 274 **rescinded by the State Water Control Board.**

275 **8. That §§ 32.1-164.2 through 32.1-164.7 of the Code of Virginia are repealed.**