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SENATE BILL NO. 1339

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 7, 2007)

(Patron Prior to Substitute—Senator Newman)

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.

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 or valid Virginia Pollution Abatement Permit.

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 Department 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. The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

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, including general permits, authorizing the land application, marketing or distribution of sewage sludge;

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

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

74 10. Procedures for receiving and responding to public comments on applications for permits and for
75 permit amendments authorizing land application at additional sites. Such procedures shall provide that
76 an application for a permit amendment to increase the acreage authorized by the permit by 50 percent
77 or more shall be treated as a new application for purposes of public notice and public hearings.

78 D. Prior to issuance of a permit authorizing the land application, marketing or distribution of
79 sewage sludge, the Department shall consult with, and give full consideration to the written
80 recommendations of the Department of Health and the Department of Conservation and Recreation.
81 Such consultation shall include any public health risks or water quality impacts associated with the
82 permitted activity. The Department of Health and the Department of Conservation may submit written
83 comments on proposed permits within 30 days after notification by the Department.

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

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

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

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

121 I. 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.

DJ. 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.

EK. 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.

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

M. The Department shall randomly conduct unannounced site inspections while land application of sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this section, § 62.1-44.19:3.1, or regulations adopted under those sections.

FN. 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.

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

HP. Not later than January 1, 2003, 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 C this section. 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 Commonwealth. 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 Deposit of the fees into the Fund; 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 pursuant to subsection G.

Q. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative 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;

183 and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to
184 subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical
185 training. Persons employed by local governments shall successfully complete such training before the
186 local government may request reimbursement from the Board for testing and monitoring of land
187 application of sewage sludge performed by the person. The completion of training shall not be a
188 prerequisite to the exercise of authority granted to local governments by any applicable provision of
189 law.

190 The Department may:

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

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

196 § 62.1-44.19:3.1. Certification of Sewage Sludge Land Applicators.

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

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

207 § 62.1-44.19:3.2. Local enforcement of sewage sludge regulations.

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

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

224 C. Local governments shall promptly notify the Department of all results from the testing and
225 monitoring of the land application of sewage sludge performed by persons employed by local
226 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
227 adopted under those sections, discovered by local governments.

228 § 62.1-44.19:3.3. Septage disposal.

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

241 § 62.1-44.19:3.4. Notification of local governing bodies.

242 A. Whenever the Department receives an application for land disposal of treated sewage, stabilized
243 sewage sludge, or stabilized septage, the Department shall notify the local governing bodies where
244 disposal is to take place of pertinent details of the proposal and establish a date for a public meeting to

discuss technical issues relating to the proposal. The Department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where land disposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The Board shall not consider the application for land disposal to be complete until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting. This section shall not apply to applications for septic tank permits.

B. When a farm is to be added to an existing permit authorizing land application of sewage sludge, the Department shall notify persons residing on property bordering such farm, and shall receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the Department shall determine whether additional site-specific requirements should be included in the authorization for land application at the farm.

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

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

4. That 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 unless amended or revoked by the Board.

5. That the State Board of Health's Biosolids Use Regulations (12 VAC 5-585) shall be transferred from the State Board of Health to the State Water Control Board on January 1, 2008, and the State Water Control Board's initial rulemaking to implement this act shall be exempt from Article 2 (§ 2.2-4006 et seq. of the Code of Virginia) of the Administrative Process Act. Such regulations that are in effect shall remain in full force and effect until altered, amended, or rescinded by the State Water Control Board.

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

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

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