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SENATE BILL NO. 235

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 8, 2010)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact §§ 10.1-1402, 10.1-1402.1, and 10.1-1402.1:1 of the Code of Virginia, relating to nonhazardous solid waste permit fees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1402, 10.1-1402.1, and 10.1-1402.1:1 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.

2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.

3. Provide technical assistance and advice concerning all aspects of waste management.

4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.

5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.

6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.

7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.

8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.

9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.

10. Apply for federal funds and transmit such funds to appropriate persons.

11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.

13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.

14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.

15a. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations,

60 but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the
61 Board pursuant to this subdivision shall be used exclusively for the hazardous waste management
62 program set forth herein.

63 15b. Collect fees from large quantity generators of hazardous wastes.

64 16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for
65 the disposal, treatment or storage of nonhazardous solid waste: (i) permit application fees ~~sufficient to~~
66 ~~defray only~~ costs related to the issuance, reissuance, amendment or modification of permits as required
67 in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to
68 issue, reissue, amend or modify such permits and (ii) annual fees established pursuant to
69 § 10.1-1402.1:1. All such fees received by the Board shall be used exclusively for the solid waste
70 management program set forth herein. The Board shall establish a schedule of fees by regulation as
71 provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

72 17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in
73 accordance with this chapter.

74 18. Make separate orders and regulations it deems necessary to meet any emergency to protect public
75 health, natural resources and the environment from the release or imminent threat of release of waste.

76 19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid
77 or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly
78 managed and to institute legal proceedings to recover the costs of the containment or clean-up activities
79 from the responsible parties.

80 20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste
81 laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the
82 purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been
83 improperly managed, including sites eligible for a joint federal and state remedial project under the
84 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law
85 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law
86 99-499, and for investigations to identify parties responsible for such mismanagement.

87 21. Abate hazards and nuisances dangerous to public health, safety or the environment, both
88 emergency and otherwise, created by the improper disposal, treatment, storage, transportation or
89 management of substances within the jurisdiction of the Board.

90 22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed
91 radioactive waste.

92 23. (Expires July 1, 2012) Adopt regulations concerning the criteria and standards for removal of
93 mercury switches by vehicle demolishers.

94 § 10.1-1402.1. Permit fee regulations.

95 Regulations promulgated by the Board which establish a permit fee assessment and collection system
96 pursuant to subdivisions 15a, 15b and 16 of § 10.1-1402 shall be governed by the following:

97 1. Permit fees charged an applicant shall reflect the average time and complexity of processing a
98 permit in each of the various categories of permits and permit actions. No fees shall be charged for
99 minor modifications or minor amendments to such permits. For purposes of this subdivision, "minor
100 permit modifications" or "minor amendments" means specific types of changes, defined by the Board,
101 that are made to keep the permit current with routine changes to the facility or its operation and that do
102 not require extensive review. A minor permit modification or amendment does not substantially alter
103 permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect
104 human health or the environment.

105 2. When promulgating regulations establishing permit fees, the Board shall take into account the
106 permit fees charged in neighboring states and the importance of not placing existing or prospective
107 industries in the Commonwealth at a competitive disadvantage.

108 3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall
109 evaluate the implementation of the permit fee program and provide this evaluation in writing to the
110 Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House
111 Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance. This
112 evaluation shall include a report on the total fees collected, the amount of general funds allocated to the
113 Department, the Department's use of the fees and the general funds, the number of permit applications
114 received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness
115 of permit processing.

116 4. Fees collected pursuant to subdivisions 15a, ~~or 15b or 16~~ of § 10.1-1402 shall not supplant or
117 reduce in any way the general fund appropriation to the Board.

118 5. These permit fees shall be collected in order to recover a portion of the ~~agency's~~ direct costs
119 associated with (i) the processing of an application to issue, reissue, amend or modify permits, which the
120 Board has authority to issue for the purpose of more efficiently and expeditiously processing and
121 maintaining permits and (ii) the inspections necessary to assure the compliance of large quantity

generators of hazardous waste. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

§ 10.1-1402.1:1. Annual fees for nonhazardous solid waste management facilities.

A. In addition to the permit fees assessed and collected pursuant to § 10.1-1402.1, the Board shall collect an annual fee from any person operating a sanitary landfill or other facility permitted under this chapter for the disposal, storage, or treatment of nonhazardous solid waste. The fees shall be exempt from statewide indirect cost charged and assessed by the Department of Accounts. Annual fees shall reflect the time and complexity of inspecting and monitoring the different categories of facilities. Any annual fee that is based on volume shall be calculated using the tonnage reported by each facility pursuant to § 10.1-1413.1 for the preceding year. The *minimum* annual fee shall be assessed as follows:

1. Noncaptive industrial landfills \$8,000
2. Construction and demolition debris landfills \$4,000
3. Sanitary landfills shall be assessed a fee based on their annual tonnage as follows:

Annual Tonnage	Base Fee	Fee per ton over base fee
Up to 10,000	\$ 1,000	
10,001 to 100,000	\$ 1,000	\$.09
100,001 to 250,000	\$10,000	\$.09
250,001 to 500,000	\$23,500	\$.075
500,001 to 1,000,000	\$42,250	\$.06
1,000,001 to 1,500,000	\$72,250	\$.05
Over 1,500,000	\$97,250	\$.04

4. Incinerators and energy recovery facilities shall be assessed a fee based upon their annual tonnage as follows:

Annual Tonnage	Fee
10,000 or less	\$2,000
10,001 to 50,000	\$3,000
50,001 to 100,000	\$4,000
100,001 or more	\$5,000

5. Other types of facilities shall be assessed an annual fee as follows:

Composting	\$500
Regulated medical waste	\$1,000
Materials recovery	\$2,000
Transfer station	\$2,000
Facilities in post-closure care	\$500

B. The Board shall by regulation prescribe the manner and schedule for remitting fees imposed by this section and may allow for the quarterly payment of any such fees. The payment of any annual fee amounts owed shall be deferred until January 1, 2005, if the person subject to those fees submits a written request to the Department prior to October 1, 2004. The selection of this deferred payment option shall not reduce the amount owed.

C. The regulation shall include provisions allowing the Director to waive or reduce fees assessed during a state of emergency or for waste resulting from emergency response actions.

D. The Board may promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits and shall establish criteria, by regulation, to provide for reductions in the annual fee amount assessed for facilities based upon acceptance into the Department's programs to recognize excellent environmental performance.

E. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

F. Beginning July 1, 2010, the Board shall periodically review the annual fee established by this

180 *section and the permit fees established by subdivision 16 of § 10.1-1402 to ensure that the total fees*
181 *collected are sufficient to cover at least 75 percent, but no more than 100 percent, of the direct costs of*
182 *(i) processing an application to issue, reissue, amend or modify permits and (ii) performing inspections*
183 *and enforcement actions necessary to assure the compliance with permits issued for any sanitary landfill*
184 *or other facility for the disposal, treatment or storage of nonhazardous solid waste.*