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HOUSE BILL NO. 186

Offered January 11, 2012

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A BILL to amend and reenact § 62.1-44.19:3 of the Code of Virginia, relating to the authority to prohibit the spreading of sewage sludge.

 Patron—Gilbert

 Referred to Committee on Agriculture, Chesapeake 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 as follows:**

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

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 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 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 Department may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

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 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.

5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

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

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59 and 62.1-44.19:3.4;

60 8. Requirements for site-specific nutrient management plans, which shall be developed by persons
61 certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is
62 land applied, and approved by the Department of Conservation and Recreation prior to permit issuance
63 under specific conditions, including but not limited to; sites operated by an owner or lessee of a
64 Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1; or Confined Poultry
65 Feeding Operation, as defined in § 62.1-44.17:1.1; sites where the permit authorizes land application
66 more frequently than once every three years at greater than 50 percent of the annual agronomic rate;;
67 and other sites based on site-specific conditions that increase the risk that land application may adversely
68 impact state waters;

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

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

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

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

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

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

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

for meeting the financial responsibility requirements of this section.

I. Any ~~county, city or town~~ *locality* may adopt an ordinance that *prohibits the land application of sewage sludge within its political boundaries or* 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.

J. 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 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.

K. 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.

N. 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.

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

P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under 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 as provided for by regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the Commonwealth. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department;
2. Deposit of the fees into the Fund; and
3. Disbursement of proceeds by the Department 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; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of sewage sludge performed by the person. The completion of training shall not be a

182 prerequisite to the exercise of authority granted to local governments by any 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 R. ~~Localities~~ *A locality*, as part of ~~their~~ *its* zoning ordinances, may designate or reasonably restrict
190 the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of
191 its citizens and the environment. Notwithstanding any contrary provision of law, a locality may by
192 ordinance require that a special exception or a special use permit be obtained to begin the storage of
193 sewage sludge on any property in its jurisdiction, including any area that is zoned as an agricultural
194 district or classification. Such ordinances shall not restrict the storage of sewage sludge on a farm as
195 long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no
196 longer than 45 days. No person shall apply to the State Health Commissioner or the Department of
197 Environmental Quality for a permit, a variance, or a permit modification authorizing such storage
198 without first complying with all requirements adopted pursuant to this subsection.