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SENATE BILL NO. 765

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend the Code of Virginia by adding in Article 2.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1413.3, relating to coal ash pond closure; mandatory testing of residential wells.

Patrons—Surovell, Chase and Ebbin; Delegate: Carroll Foy

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1413.3 as follows:

§ 10.1-1413.3. Drinking water well testing near coal ash ponds.

A. For the purposes of this section:

"Coal ash pond" means any impoundment or other accumulation of coal combustion by-products that is located in the Chesapeake Bay watershed and is constructed or utilized by an electric utility or independent power producer to hold, dispose of, treat, or store coal combustion by-products.

"Utility" means the owner or operator of a coal ash pond.

B. No later than October 1, 2018, each utility in the Commonwealth shall submit to the Department a complete survey identifying all drinking water supply wells within one mile of any coal ash pond boundary. The utility shall use reasonable efforts to determine the locations of all wells within one mile of the coal ash pond boundary and shall not rely solely on records maintained by the Virginia Department of Health or other public records. Such reasonable efforts shall include the distribution of notices that explain the purpose of the survey and the well-testing program and provide each owner with a means to apply for testing. The utility shall distribute such notices through the United States mail to the owner of each parcel of land any part of which is located within one mile of a coal ash pond boundary and shall post a notice in at least one newspaper of general circulation in the locality.

C. For each drinking water supply well within one mile of any coal ash pond, as identified through the survey conducted pursuant to subsection B, the utility shall commission a well water test on or before January 1, 2019, on behalf of the well's owner. The test shall be conducted by a company certified to perform such tests by the Virginia Environmental Laboratory Accreditation Program. The utility shall recommend a certified laboratory to perform the test, but the well's owner may elect to have an independent certified laboratory perform the test. Such test shall, at a minimum, test for alkalinity, aluminum, antimony, arsenic, barium, beryllium, bicarbonate, cadmium, calcium, carbonate, chloride, chromium (total), chromium (hexavalent), cobalt, copper, iron, lead, magnesium, manganese, mercury, molybdenum, nickel, pH, potassium, selenium, sodium, strontium, sulfate, thallium, total dissolved solids, turbidity, vanadium, and zinc. The utility shall pay the reasonable costs of such testing.

D. The utility shall commission a test as required by subsection C for each well (i) once per year during each of the five years following the approval by the Board or the Department of the closure by capping in place of the coal ash pond and (ii) once every five years thereafter.

E. If any sampling, test, or water quality analysis conducted pursuant to the provisions of this section indicates that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with coal ash, the Board shall promptly instruct the utility to replace the contaminated drinking water supply well with (i) an alternate supply of potable drinking water, supplied within 24 hours of the instruction, and (ii) an alternate supply of water that is safe for other household uses, supplied within 30 days of the instruction. All costs associated with such alternate supplies of water shall be borne by the utility.

F. The Department shall consider the results of the tests conducted pursuant to the provisions of this section in any permitting, monitoring, or enforcement proceedings and may require the utility to commission additional testing.

G. Nothing in this section shall be construed to preclude or impair the right of any property owner to refuse the sampling or testing of any well on his property. The requirements of this section are in addition to other applicable laws or regulations, and nothing in this section, including the requirement to commission testing or to replace contaminated drinking water, shall preempt or preclude any additional legal action or remedy authorized by law.

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