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SENATE BILL NO. 409

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources on January 28, 2020)

(Patron Prior to Substitute—Senator Hashmi)

A BILL to amend and reenact § 10.1-1408.1 of the Code of Virginia, relating to sanitary landfill; permit; very large landfill.

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1408.1 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-1408.1. Permit required; open dumps prohibited.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director. No permit for a new solid waste management facility or amendment to a permit allowing the expansion of a facility or an increase in capacity, where such permit or amendment is likely to result in the creation of a landfill whose capacity exceeds 35 million tons, shall be issued.

B. No application for (i) a new solid waste management facility permit or (ii) application for a permit amendment or variance allowing a category 2 landfill, as defined in this section, to expand or increase in capacity shall be complete unless it contains the following:

1. Certification from the governing body of the county, city or town locality in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The governing body shall inform the applicant and the Department of the facility's compliance or noncompliance not more than 120 days from receipt of a request from the applicant. No such certification shall be required for the application for the renewal of a permit or transfer of a permit as authorized by regulations of the Board;

2. A disclosure statement, except that the Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirement for a disclosure statement for a captive industrial landfill when such a statement would not serve the purposes of this chapter;

3. If the applicant proposes to locate the facility on property not governed by any county, city or town local zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § 15.2-2204, to receive public comment on the proposed facility. Such certification shall be provided to the applicant and the Department within 120 days from receipt of a request from the applicant;

4. If the applicant proposes to operate a new sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date.

The provisions of this subdivision shall not apply to applicants for a permit to operate a new captive industrial landfill or a new construction-demolition-debris landfill;

5. If the applicant is a local government or public authority that proposes to operate a new municipal sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include the formation of a citizens'

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60 advisory group to assist the locality or public authority with the selection of a proposed site for the
61 sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks
62 in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is
63 proposed to be located, and holding at least one public meeting within the locality to identify issues of
64 concern, to facilitate communication and to establish a dialogue between the applicant and persons who
65 may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice
66 shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary
67 landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time
68 and location of the public meeting the applicant will hold and the name, address and telephone number
69 of a person employed by the applicant, who can be contacted by interested persons to answer questions
70 or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The
71 first publication of the public notice shall be at least fourteen days prior to the public meeting date. For
72 local governments that have zoning ordinances, such public comment steps as required under
73 §§ 15.2-2204 and 15.2-2285 shall satisfy the public comment requirements for public hearings and
74 public notice as required under this section. Any applicant which is a local government or public
75 authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is
76 already located shall be exempt from the public comment requirements for public hearing and public
77 notice otherwise required under this section;

78 6. If the application is for a new municipal solid waste landfill or for an expansion of an existing
79 municipal solid waste landfill, a statement, signed by the applicant, guaranteeing that sufficient disposal
80 capacity will be available in the facility to enable localities within the Commonwealth to comply with
81 solid waste management plans developed pursuant to § 10.1-1411, and certifying that such localities will
82 be allowed to contract for and to reserve disposal capacity in the facility. This provision shall not apply
83 to permit applications from one or more political subdivisions for new landfills or expanded landfills
84 that will only accept municipal solid waste generated within those political subdivisions' jurisdiction or
85 municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional
86 agreement;

87 7. If the application is for a new municipal solid waste landfill or for an expansion of an existing
88 municipal solid waste landfill, certification from the governing body of the locality in which the facility
89 would be located that a host agreement has been reached between the applicant and the governing body
90 unless the governing body or a public service authority of which the governing body is a member would
91 be the owner and operator of the landfill. The agreement shall, at a minimum, have provisions covering
92 (i) the amount of financial compensation the applicant will provide the host locality, (ii) daily travel
93 routes and traffic volumes, (iii) the daily disposal limit, and (iv) the anticipated service area of the
94 facility. The host agreement shall contain a provision that the applicant will pay the full cost of at least
95 one full-time employee of the locality whose responsibility it will be to monitor and inspect waste
96 transportation and disposal practices in the locality. The host agreement shall also provide that the
97 applicant shall, when requested by the host locality, split air and water samples so that the host locality
98 may independently test the sample, with all associated costs paid for by the applicant. All such sampling
99 results shall be provided to the Department. For purposes of this subdivision, "host agreement" means
100 any lease, contract, agreement or land use permit entered into or issued by the locality in which the
101 landfill is situated which includes terms or conditions governing the operation of the landfill;

102 8. If the application is for a locality-owned and locality-operated new municipal solid waste landfill
103 or for an expansion of an existing such municipal solid waste landfill, information on the anticipated (i)
104 daily travel routes and traffic volumes, (ii) daily disposal limit, and (iii) service area of the facility; and

105 9. If the application is for a new solid waste management facility permit or for modification of a
106 permit to allow an existing solid waste management facility to expand or increase its capacity, the
107 application shall include certification from the governing body for the locality in which the facility is or
108 will be located that: (i) the proposed new facility or the expansion or increase in capacity of the existing
109 facility is consistent with the applicable local or regional solid waste management plan developed and
110 approved pursuant to § 10.1-1411; or (ii) the local government or solid waste management planning unit
111 has initiated the process to revise the solid waste management plan to include the new or expanded
112 facility. Inclusion of such certification shall be sufficient to allow processing of the permit application,
113 up to but not including publication of the draft permit or permit amendment for public comment, but
114 shall not bind the Director in making the determination required by subdivision D 1.

115 C. Notwithstanding any other provision of law:

116 1. Every holder of a permit issued under this article who has not earlier filed a disclosure statement
117 shall, prior to July 1, 1991, file a disclosure statement with the Director.

118 2. Every applicant for a permit under this article shall file a disclosure statement with the Director,
119 together with the permit application or prior to September 1, 1990, whichever comes later. No permit
120 application shall be deemed incomplete for lack of a disclosure statement prior to September 1, 1990.

121 3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition

122 that renders any portion of the disclosure statement materially incomplete or inaccurate.

123 4. The Director, upon request and in his sole discretion, and when in his judgment other information
124 is sufficient and available, may waive the requirements of this subsection for a captive industrial waste
125 landfill when such requirements would not serve the purposes of this chapter.

126 D. 1. Except as provided in subdivision D 2, no permit for a new solid waste management facility
127 nor any amendment to a permit allowing facility expansion or an increase in capacity shall be issued
128 until the Director has determined, after an investigation and analysis of the potential human health,
129 environmental, transportation infrastructure, and transportation safety impacts and needs and an
130 evaluation of comments by the host local government, other local governments and interested persons,
131 that (i) the proposed facility, expansion, or increase protects present and future human health and safety
132 and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will
133 exist to safely handle the waste flow; (iv) the increase is consistent with locality-imposed or
134 state-imposed daily disposal limits; (v) the public interest will be served by *the operation of* the
135 proposed ~~facility's operation~~ *facility* or the expansion or increase in capacity of a facility; and (vi) the
136 proposed solid waste management facility, facility expansion, or additional capacity is consistent with
137 regional and local solid waste management plans developed pursuant to § 10.1-1411. The Department
138 shall hold a public hearing within the said ~~county, city or town~~ *locality* prior to the issuance of any such
139 permit for the management of nonhazardous solid waste. Subdivision D 2, in lieu of this subdivision,
140 shall apply to *a* nonhazardous industrial solid waste management ~~facilities~~ *facility that is* owned or
141 operated by the generator of the waste managed at the facility, and that ~~accept~~ *accepts* only waste
142 generated by the facility owner or operator. The Board shall have the authority to promulgate regulations
143 to implement this subdivision.

144 2. No new permit for a nonhazardous industrial solid waste management facility that is owned or
145 operated by the generator of the waste managed at the facility, and that accepts only waste generated by
146 the facility owner or operator, shall be issued until the Director has determined, after investigation and
147 evaluation of comments by the local government, that the proposed facility poses no substantial present
148 or potential danger to human health or the environment. The Department shall hold a public hearing
149 within the ~~county, city or town~~ *locality* where the facility is to be located prior to the issuance of any
150 such permit for the management of nonhazardous industrial solid waste.

151 E. The permit shall contain such conditions or requirements as are necessary to comply with the
152 requirements of this Code and the regulations of the Board and to protect present and future human
153 health and the environment. To the extent allowed by federal law, any person holding a permit that is
154 intending to upgrade the permitted solid waste management facility by installing technology, control
155 equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will
156 result in improved energy efficiency, protect waters of the state, including both surface and ground
157 water, and protect air quality shall not be required to obtain a modified or amended permit.

158 The Director may include in any permit such recordkeeping, testing and reporting requirements as are
159 necessary to ensure that the local governing body of the ~~county, city or town~~ *locality* where the waste
160 management facility is located is kept timely informed regarding the general nature and quantity of
161 waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall
162 require disclosure of proprietary information only as is necessary to carry out the purposes of this
163 chapter. At least once every ten years, the Director shall review and issue written findings on the
164 environmental compliance history of each permittee, material changes, if any, in key personnel, and
165 technical limitations, standards, or regulations on which the original permit was based. The time period
166 for review of each category of permits shall be established by Board regulation. If, upon such review,
167 the Director finds that repeated material or substantial violations of the permittee or material changes in
168 the permittee's key personnel would make continued operation of the facility not in the best interests of
169 human health or the environment, the Director shall amend or revoke the permit, in accordance
170 herewith. Whenever such review is undertaken, the Director may amend the permit to include additional
171 limitations, standards, or conditions when the technical limitations, standards, or regulations on which
172 the original permit was based have been changed by statute or amended by regulation or when any of
173 the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any
174 permit for any of the grounds listed under subsection A of § 10.1-1409.

175 F. There shall exist no right to operate a landfill or other facility for the disposal, treatment or
176 storage of nonhazardous solid waste or hazardous waste within the Commonwealth. Permits for solid
177 waste management facilities shall not be transferable except as authorized in regulations promulgated by
178 the Board. The issuance of a permit shall not convey or establish any property rights or any exclusive
179 privilege, nor shall it authorize any injury to private property or any invasion of personal rights or any
180 infringement of federal, state, or local law or regulation.

181 G. No person shall dispose of solid waste in open dumps.

182 H. No person shall own, operate or allow to be operated on his property an open dump.

183 I. No person shall allow waste to be disposed of on his property without a permit. Any person who
184 removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be
185 required to obtain a permit if such material is deposited or placed on the same or other property of the
186 same landowner from which such materials were cleared. The Board shall by regulation provide for
187 other reasonable exemptions from permitting requirements for the disposal of trees, brush and other
188 vegetation when such materials are removed for agricultural or forestal purposes.

189 When promulgating any regulation pursuant to this section, the Board shall consider the character of
190 the land affected, the density of population, and the volume of waste to be disposed, as well as other
191 relevant factors.

192 J. No permit shall be required pursuant to this section for recycling or for temporary storage
193 incidental to recycling. As used in this subsection, "recycling" means any process whereby material
194 which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in
195 an industrial process to make a product, or as an effective substitute for a commercial product.

196 K. The Board shall provide for reasonable exemptions from the permitting requirements, both
197 procedural and substantive, in order to encourage the development of yard waste composting facilities.
198 To accomplish this, the Board is authorized to exempt such facilities from regulations governing the
199 treatment of waste and to establish an expedited approval process. Agricultural operations receiving only
200 yard waste for composting shall be exempt from permitting requirements provided that (i) the
201 composting area is located not less than 300 feet from a property boundary, is located not less than
202 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is
203 not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural
204 operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of
205 finished compost generated; (iii) the total time for the composting process and storage of material that is
206 being composted or has been composted shall not exceed eighteen months prior to its field application
207 or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural
208 operation notifies the Director in writing of his intent to operate a yard waste composting facility and
209 the amount of land available for the receipt of yard waste. In addition to the requirements set forth in
210 clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation
211 that receives more than 6,000 cubic yards of yard waste generated from property not within the control
212 of the owner or the operator in any twelve-month period shall be exempt from permitting requirements
213 provided (i) the owner and operator submit to the Director an annual report describing the volume and
214 types of yard waste received by such operation for composting and (ii) the operator shall certify that the
215 yard waste composting facility complies with local ordinances. The Director shall establish a procedure
216 for the filing of the notices, annual reports and certificates required by this subsection and shall
217 prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit
218 the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard
219 waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or
220 of conditioning soil shall be sold in accordance with Chapter 36 (§ 3.2-3600 et seq.) of Title 3.2. As
221 used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in § 3.2-300.

222 The operation of a composting facility as provided in this subsection shall not relieve the owner or
223 operator of such a facility from liability for any violation of this chapter.

224 L. The Board shall provide for reasonable exemptions from the permitting requirements, both
225 procedural and substantive, in order to encourage the development of facilities for the decomposition of
226 vegetative waste. To accomplish this, the Board shall approve an expedited approval process. As used in
227 this subsection, the decomposition of vegetative waste means a natural aerobic or anaerobic process,
228 active or passive, which results in the decay and chemical breakdown of the vegetative waste. Nothing
229 in this subsection shall be construed to prohibit a city or county from exercising its existing authority to
230 regulate such facilities by requiring, among other things, permits and proof of financial security.

231 M. In receiving and processing applications for permits required by this section, the Director shall
232 assign top priority to applications which (i) agree to accept nonhazardous recycling residues and (ii)
233 pledge to charge tipping fees for disposal of nonhazardous recycling residues which do not exceed those
234 charged for nonhazardous municipal solid waste. Applications meeting these requirements shall be acted
235 upon no later than six months after they are deemed complete.

236 N. Every solid waste management facility shall be operated in compliance with the regulations
237 promulgated by the Board pursuant to this chapter. To the extent consistent with federal law, those
238 facilities which were permitted prior to March 15, 1993, and upon which solid waste has been disposed
239 of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical
240 design capacity, provided that the facility is in compliance with the requirements for liners and leachate
241 control in effect at the time of permit issuance, and further provided that on or before October 9, 1993,
242 the owner or operator of the solid waste management facility submits to the Director:

243 1. An acknowledgement that the owner or operator is familiar with state and federal law and
244 regulations pertaining to solid waste management facilities operating after October 9, 1993, including

245 postclosure care, corrective action and financial responsibility requirements;

246 2. A statement signed by a registered professional engineer that he has reviewed the regulations
247 established by the Department for solid waste management facilities, including the open dump criteria
248 contained therein; that he has inspected the facility and examined the monitoring data compiled for the
249 facility in accordance with applicable regulations; and that, on the basis of his inspection and review, he
250 has concluded that: (i) the facility is not an open dump, (ii) the facility does not pose a substantial
251 present or potential hazard to human health and the environment, and (iii) the leachate or residues from
252 the facility do not pose a threat of contamination or pollution of the air, surface water or ground water
253 in a manner constituting an open dump or resulting in a substantial present or potential hazard to human
254 health or the environment; and

255 3. A statement signed by the owner or operator (i) that the facility complies with applicable financial
256 assurance regulations and (ii) estimating when the facility will reach its vertical design capacity.

257 The facility may not be enlarged prematurely to avoid compliance with state or federal regulations
258 when such enlargement is not consistent with past operating practices, the permit or modified operating
259 practices to ensure good management.

260 Facilities which are authorized by this subsection to accept waste for disposal beyond the waste
261 boundaries existing on October 9, 1993, shall be as follows:

262 Category 1: Nonhazardous industrial waste facilities that are located on property owned or controlled
263 by the generator of the waste disposed of in the facility;

264 Category 2: Nonhazardous industrial waste facilities other than those that are located on property
265 owned or controlled by the generator of the waste disposed of in the facility, provided that the facility
266 accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or
267 other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

268 Category 3: Facilities that accept only construction-demolition-debris waste as defined in the Board's
269 regulations.

270 The Director may prohibit or restrict the disposal of waste in facilities described in this subsection
271 which contains hazardous constituents as defined in applicable regulations which, in the opinion of the
272 Director, would pose a substantial risk to health or the environment. Facilities described in category 3
273 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that
274 there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable
275 performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of
276 the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

277 Owners or operators of facilities which are authorized under this subsection to accept waste for
278 disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded
279 disposal areas maintain setback distances applicable to such facilities under the Board's current
280 regulations and local ordinances. Prior to the expansion of any facility described in category 2 or 3, the
281 owner or operator shall provide the Director with written notice of the proposed expansion at least sixty
282 days prior to commencement of construction. The notice shall include recent groundwater monitoring
283 data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a
284 manner constituting an open dump or creating a substantial present or potential hazard to human health
285 or the environment. The Director shall evaluate the data included with the notification and may advise
286 the owner or operator of any additional requirements that may be necessary to ensure compliance with
287 applicable laws and prevent a substantial present or potential hazard to health or the environment.

288 Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in
289 compliance with regulations promulgated by the Board.

290 Nothing in this subsection shall alter any requirement for groundwater monitoring, financial
291 responsibility, operator certification, closure, postclosure care, operation, maintenance or corrective action
292 imposed under state or federal law or regulation, or impair the powers of the Director pursuant to
293 § 10.1-1409.

294 O. Portions of a permitted solid waste management facility used solely for the storage of household
295 hazardous waste may store household hazardous waste for a period not to exceed one year, provided that
296 such wastes are properly contained and are segregated to prevent mixing of incompatible wastes.

297 P. Any permit for a new municipal solid waste landfill, and any permit amendment authorizing
298 expansion of an existing municipal solid waste landfill, shall incorporate conditions to require that
299 capacity in the landfill will be available to localities within the Commonwealth that choose to contract
300 for and reserve such capacity for disposal of such localities' solid waste in accordance with solid waste
301 management plans developed by such localities pursuant to § 10.1-1411. This provision shall not apply
302 to permit applications from one or more political subdivisions for new landfills or expanded landfills
303 that will only accept municipal solid waste generated within the political subdivision or subdivisions'
304 jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an
305 interjurisdictional agreement.

306 Q. No application for coverage under a permit-by-rule or for modification of coverage under a
307 permit-by-rule shall be complete unless it contains certification from the governing body of the locality
308 in which the facility is to be located that the facility is consistent with the solid waste management plan
309 developed and approved in accordance with § 10.1-1411.