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SENATE BILL NO. 769

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 4, 2020)

(Patron Prior to Substitute—Senator Reeves)

A BILL to amend and reenact § 10.1-1409 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1186.6, relating to environmental proceedings; findings of fact.

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1409 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1186.6 as follows:

§ 10.1-1186.6. Findings of fact in formal proceedings.

In any formal proceeding initiated pursuant to § 2.2-4020 where the parties are operating under a consent decree, the Department shall give deference to the consent decree and findings of fact by a presiding officer based on the evidence presented at the hearing. For any decision on review brought pursuant to § 2.2-4027 in which a hearing officer has made a recommendation to the Department on a factual issue, a rebuttable presumption shall be created with respect to such facts, and the court shall give deference to such factual recommendations.

§ 10.1-1409. Revocation or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended, or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board, *provided, however, that in any such action, the Director shall include in his decision the factual and legal basis supporting such action:*

1. The permit holder has violated any regulation or order of the Board, any condition of a permit, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a threat of release of harmful substances into the environment or presents a hazard to human health, or the violation is representative of a pattern of serious or repeated violations ~~which that, in the opinion of the Director based on the facts,~~ demonstrate the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The sanitary landfill or other facility used for disposal, storage or treatment of solid waste is maintained or operated in such a manner as to pose a substantial present or potential hazard to human health or the environment;

3. The sanitary landfill, or other facility used for the disposal, storage or treatment of solid waste, because of its location, construction or lack of protective construction or measures to prevent pollution, poses a substantial present or potential hazard to human health or the environment;

4. Leachate or residues from the sanitary landfill or other facility used for the disposal, storage or treatment of solid waste pose a substantial threat of contamination or pollution of the air, surface waters or ground water;

5. The person to whom the permit was issued abandons or ceases to operate the facility, or sells, leases or transfers the facility without properly transferring the permit in accordance with the regulations of the Board;

6. As a result of changes in key personnel, the Director finds that the requirements necessary for issuance of a permit are no longer satisfied;

7. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in applying for a permit or in his disclosure statement, or in any other report or certification required under this law or under the regulations of the Board, or has knowingly or willfully failed to notify the Director of any material change to the information in its disclosure statement; or

8. Any key personnel has been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; violation of antitrust laws; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the Director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

60 (a) The nature and details of the acts attributed to key personnel;
61 (b) The degree of culpability of the applicant, if any;
62 (c) The applicant's policy or history of discipline of key personnel for such activities;
63 (d) Whether the applicant has substantially complied with all rules, regulations, permits, orders and
64 statutes applicable to the applicant's activities in Virginia;
65 (e) Whether the applicant has implemented formal management controls to minimize and prevent the
66 occurrence of such violations; and
67 (f) Mitigation based upon demonstration of good behavior by the applicant including, without
68 limitation, prompt payment of damages, cooperation with investigations, termination of employment or
69 other relationship with key personnel or other persons responsible for the violations or other
70 demonstrations of good behavior by the applicant that the Director finds relevant to its decision.
71 *9. Prior to revocation of a permit issued pursuant to this section, the Director shall consider and*
72 *issue findings of fact regarding the impact of revocation on the host community and on any locality*
73 *relying on the facility for waste disposal, as documented in the regional solid waste management plan*
74 *or any host agreement.*
75 B. The Director may amend or attach conditions to a permit when:
76 1. There is a significant change in the manner and scope of operation which may require new or
77 additional permit conditions or safeguards to protect the public health and environment;
78 2. There is found to be a possibility of pollution causing significant adverse effects on the air, land,
79 surface water or ground water;
80 3. Investigation has shown the need for additional equipment, construction, procedures and testing to
81 ensure the protection of the public health and the environment from significant adverse effects; or
82 4. The amendment is necessary to meet changes in applicable regulatory requirements.
83 C. If the Director finds that solid wastes are no longer being stored, treated or disposed at a facility
84 in accordance with Board regulations, he may revoke the permit issued for such facility. As a condition
85 to granting or continuing in effect a permit, he may also require the permittee to provide perpetual care
86 and surveillance of the facility.
87 D. If the Director summarily suspends a permit pursuant to subdivision 18 of § 10.1-1402, the
88 Director shall hold a conference pursuant to § 2.2-4019 within forty-eight hours to consider whether to
89 continue the suspension pending a hearing to amend or revoke the permit, or to issue any other
90 appropriate order. Notice of the hearing shall be delivered at the conference or sent at the time the
91 permit is suspended. Any person whose permit is suspended by the Director shall cease activity for
92 which the permit was issued until the permit is reinstated by the Director or by a court.
93 **2. That in any formal proceeding initiated pursuant to § 2.2-4020 of the Code of Virginia prior to**
94 **July 1, 2020, in which the Department of Environmental Quality rejected a recommendation from**
95 **a hearing officer or presiding officer and for which a final adjudication pursuant to § 2.2-4027 of**
96 **the Code of Virginia has not been rendered, a court, prior to rendering such final adjudication,**
97 **shall remand the proceeding to establish the findings of fact by a presiding officer explicitly based**
98 **on the evidence presented at the hearing and to establish the factual and legal basis for the**
99 **decision in accordance with the provisions of this act.**