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SENATE BILL NO. 1210

Offered January 13, 2021

Prefiled January 11, 2021

A BILL to amend and reenact §§ 10.1-1402 and 62.1-44.15:6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1402.1:2, relating to environmental permit fees.

Patron—Petersen

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1402 and 62.1-44.15:6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1402.1:2 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.

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59 15a. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage
60 or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only
61 costs related to the issuance of permits as required in this chapter in accordance with Board regulations,
62 but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the
63 Board pursuant to this subdivision shall be used exclusively for the hazardous waste management
64 program set forth herein.

65 15b. Collect fees from large quantity generators of hazardous wastes.

66 16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for
67 the disposal, treatment, or storage of nonhazardous solid waste: (i) permit application fees sufficient to
68 defray only costs related to the issuance, reissuance, amendment, or modification of permits as required
69 in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to
70 issue, reissue, amend, or modify such permits and; (ii) annual fees established pursuant to § §§
71 10.1-1402.1:1 and 10.1-1402.1:2. All such fees received by the Board shall be used exclusively for the
72 solid waste management program set forth herein. The Board shall establish a schedule of fees by
73 regulation as provided in §§ 10.1-1402.1, 10.1-1402.1:2, 10.1-1402.2, and 10.1-1402.3.

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

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

78 19. Take actions to contain or clean up any site or to issue orders to require cleanup of any site
79 where (i) solid or hazardous waste, or another substance within the jurisdiction of the Board, has been
80 improperly managed or (ii) an open dump has been created, and to institute legal proceedings to recover
81 the costs of the containment or clean-up activities from any responsible party. Such responsible party
82 shall include any party, including the owner or operator or any other person, who caused the site to
83 become an open dump or who caused or arranged for the improper management of such solid or
84 hazardous waste or other substance within the jurisdiction of the Board.

85 20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste
86 laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the
87 purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been
88 improperly managed, including sites eligible for a joint federal and state remedial project under the
89 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law
90 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law
91 99-499, and for investigations to identify parties responsible for such mismanagement.

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

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

97 23. [Expired.]

98 **§ 10.1-1402.1:2. Annual fees for nonhazardous solid waste management facilities; Board to**
99 **establish.**

100 *A. In addition to the permit fees assessed and collected pursuant to § 10.1-1402.1, the Board shall*
101 *adopt regulations to collect from any person operating a sanitary landfill or other facility permitted*
102 *pursuant to this chapter for the disposal, storage, or treatment of nonhazardous solid waste, such*
103 *annual fees as necessary to provide funding for the total direct costs of the nonhazardous solid waste*
104 *management program when aggregated and combined with the permit fees assessed and collected*
105 *pursuant to § 10.1-1402.1. Such fees shall be exempt from statewide indirect costs charged and assessed*
106 *by the Department of Accounts. Any annual fee that is based on volume shall be calculated using the*
107 *tonnage reported by each facility pursuant to § 10.1-1413.1 for the preceding year. The annual fee*
108 *amounts shall be adjusted annually on the basis of the United States Average Consumer Price Index for*
109 *all items, all urban consumers (CPI-U) as published by the Bureau of Labor Statistics of the U.S.*
110 *Department of Labor.*

111 *B. The Board shall adopt regulations to determine the manner of and schedule for remitting fees*
112 *imposed by this section. Such regulation may allow for the quarterly payment of any such fees.*

113 *C. Any regulation adopted pursuant to subsection B shall include provisions allowing the Director to*
114 *waive or reduce fees assessed during a state of emergency or for waste resulting from an emergency*
115 *response action.*

116 *D. The Board may adopt regulations establishing a schedule of reduced permit fees for a facility that*
117 *has established a record of compliance with the terms and requirements of its permit and shall adopt*
118 *regulations to establish criteria for reductions in the annual fee amount assessed for facilities based*
119 *upon acceptance into the Department's programs to recognize excellent environmental performance.*

120 *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.

§ 62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Wildlife Resources' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the Board has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a Virginia Pollution Abatement permit shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers- or Department of the Navy-sponsored dredging projects or for the regularly scheduled renewal of an individual permit for an existing facility. Fees shall be charged for a major modification or reissuance of a permit initiated by the permittee that occurs between permit issuance and the stated expiration date. No fees shall be charged for a modification or amendment made at the Board's initiative. In no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	\$24,000
Major Municipal	\$21,300
Minor Industrial with nonstandard limits	\$10,300
Minor Industrial with standard limits	\$6,600
Minor Municipal greater than 100,000 gallons per day	\$7,500
Minor Municipal 10,001-100,000 gallons per day	\$6,000
Minor Municipal 1,000-10,000 gallons per day	\$5,400
Minor Municipal less than 1,000 gallons per day	\$2,000
General-industrial stormwater management	\$500
General-stormwater management-phase I land clearing	\$500
General-stormwater management-phase II land clearing	\$300
General-other	\$600
2. Virginia Pollution Abatement	
Industrial/Wastewater 10 or more inches per year	\$15,000
Industrial/Wastewater less than 10 inches per year	\$10,500
Industrial/Sludge	\$7,500
Municipal/Wastewater	\$13,500
Municipal/Sludge	\$7,500
General Permit	\$600
Other	\$750

The fee for the major modification of a permit or certificate that occurs between the permit issuance and expiration dates shall be 50 percent of the maximum amount established by this subsection. No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

B2. Each permitted facility shall pay a permit maintenance fee to the Board by October 1 of each year, not to exceed the following amounts:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	\$4,800
Major Municipal greater than 10 million gallons per day	\$4,750
Major Municipal 2-10 million gallons per day	\$4,350
Major Municipal less than 2 million gallons per day	\$3,850
Minor Industrial with nonstandard limits	\$2,040
Minor Industrial with standard limits	\$1,320
Minor Industrial water treatment system	\$1,200

185	Minor Municipal greater than 100,000 gallons per day	\$1,500
186	Minor Municipal 10,001-100,000 gallons per day	\$1,200
187	Minor Municipal 1,000-10,000 gallons per day	\$1,080
188	Minor Municipal less than 1,000 gallons per day	\$400
189	2. Virginia Pollution Abatement	
190	Industrial/Wastewater 10 or more inches per year	\$3,000
191	Industrial/Wastewater less than 10 inches per year	\$2,100
192	Industrial/Sludge	\$3,000
193	Municipal/Wastewater	\$2,700
194	Municipal/Sludge	\$1,500

195 An additional permit maintenance fee of \$1,000 shall be collected from facilities in a toxics
 196 management program and an additional permit maintenance fee shall be collected from facilities that
 197 have more than five process wastewater discharge outfalls. Permit maintenance fees shall be collected
 198 annually and shall be remitted by October 1 of each year. For a local government or public service
 199 authority with permits for multiple facilities in a single jurisdiction, the permit maintenance fees for
 200 permits held as of April 1, 2004, shall not exceed \$20,000 per year. No permit maintenance fee shall be
 201 assessed for facilities operating under a general permit or for permits pertaining to a farming operation
 202 engaged in production for market.

203 B3. Permit application fees charged for Virginia Water Protection Permits, ground water withdrawal
 204 permits, and surface water withdrawal permits shall reflect the average time and complexity of
 205 processing a permit in each of the various categories of permits and permit actions and the size of the
 206 proposed impact. Only one permit fee shall be assessed for a water protection permit involving elements
 207 of more than one category of permit fees under this section. The fee shall be assessed based upon the
 208 primary purpose of the proposed activity. In no instance shall the Board charge a fee for a permit
 209 pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of
 210 Engineers- or Department of the Navy-sponsored dredging projects, and in no instance shall the Board
 211 exceed the following amounts for the processing of each type of permit/certificate category:

212	Type of Permit	Maximum Amount
213	1. Virginia Water Protection	
214	Individual-wetland impacts	\$2,400 plus \$220 per 1/10 acre of impact over two
215		acres, not to exceed \$60,000
216	Individual-minimum instream flow	\$25,000
217	Individual-reservoir	\$35,000
218	Individual-nonmetallic mineral mining	\$7,500
219	General-less than 1/10 acre impact	\$0
220	General-1/10 to 1/2 acre impact	\$600
221	General-greater than 1/2 to one acre impact	\$1,200
222	General-greater than one acre to two acres of impact	\$120 per 1/10 acre of impact
223	2. Ground Water Withdrawal	\$9,000
224	3. Surface Water Withdrawal	\$12,000

225 No fees shall be charged for minor modifications or minor amendments to such permits. For the
 226 purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of
 227 changes defined by the Board that are made to keep the permit current with routine changes to the
 228 facility or its operation that do not require extensive review. A minor permit modification or amendment
 229 does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity
 230 of the facility to protect human health or the environment.

231 B4. The Board shall adopt regulations specifying permit maintenance fees that each permitted facility
 232 shall pay to the Board for any (i) Virginia Water Protection Individual-minimum instream flow permit,
 233 (ii) Virginia Water Protection Individual-reservoir permit, (iii) Ground Water Withdrawal permit, or (iv)
 234 Surface Water Withdrawal permit. Such permit maintenance fees shall be set at an amount that is
 235 necessary to collect no less than 40 percent and no greater than 50 percent of the direct costs required
 236 for the administration, compliance, and enforcement of such permits. Such permit maintenance fees shall
 237 be collected annually and shall be remitted by October 1 of each year. No permit maintenance fee shall
 238 be assessed for any general permit or permit for a farming operation engaged in production for market.

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

242 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board
 243 shall make a report on the implementation of the water permit program to the Senate Committee on
 244 Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House
 245 Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources
 246 and the House Committee on Finance. The report shall include the following: (i) the total costs, both
 247 direct and indirect, including the costs of overhead, water quality planning, water quality assessment,
 248 operations coordination, and surface water and ground water investigations, (ii) the total fees collected

by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Board.

F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits that may be required by the federal government and administered by the Board, or any new permit required pursuant to any law of the Commonwealth.

G. The Board is authorized to 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 accepted into the Department's programs to recognize excellent environmental performance.

2. That the Virginia Waste Management Board shall promulgate initial regulations to implement the provisions of § 10.1-1402.1:2 of the Code of Virginia, as created by this act, to be effective no later than January 1, 2022. Such initial regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

3. That upon the effective date of regulations adopted pursuant to § 10.1-1402.1:2 of the Code of Virginia, as created by this act, § 10.1-1402.1:1 of the Code of Virginia is repealed.

4. That any general fund moneys appropriated to the Department of Environmental Quality for operational costs and expenditures associated with the nonhazardous solid waste management program shall not be proportionally reduced until the revenues collected pursuant to § 10.1-1402.1:2 of the Code of Virginia, as created by this act, are sufficient to cover the direct program costs as described by the provisions of this act.

5. That the State Water Control Board shall promulgate initial regulations to implement the provisions of subsection B4 of § 62.1-44.15:6 of the Code of Virginia, as amended by this act, to be effective no later than January 1, 2022. Such initial regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

6. That any general fund moneys appropriated to the Department of Environmental Quality for operational costs or expenditures associated with (i) Virginia Water Protection Individual-minimum instream flow permits, (ii) Virginia Water Protection Individual-reservoir permits, (iii) Ground Water Withdrawal permits, or (iv) Surface Water Withdrawal permits programs shall not be proportionally reduced until such time as the revenues collected pursuant to subsection B4 of § 62.1-44.15:6 of the Code of Virginia, as amended by this act, are sufficient to cover the proportional direct program costs as described by the provisions of this act.