

LD6662724

## SENATE BILL NO. 556

Offered January 25, 1994

*A BILL to amend and reenact § 10.1-1408.1 of the Code of Virginia, relating to the disposal of vegetation at real estate development sites.*

Patrons—Potts, Calhoun, Hawkins, Holland, C.A., Holland, R.J., Houck, Howell, Lambert, Nolen, Norment, Saslaw and Stolle; Delegate: Watkins

Referred to the Committee on Agriculture, Conservation and Natural Resources

**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.

B. No application for a new solid waste management facility permit shall be complete unless it contains the following:

1. Certification from the governing body of the county, city or town 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; and

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.

C. Notwithstanding any other provision of law:

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

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

3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition that renders any portion of the disclosure statement materially incomplete or inaccurate.

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

D. No permit for a new solid waste management facility shall be issued until the Director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste.

E. The permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and the regulations of the Board and to prevent a substantial present or potential hazard to human health and the environment.

The Director may include in any permit such recordkeeping, testing and reporting requirements as are necessary to ensure that the local governing body of the county, city or town where the waste management facility is located is kept timely informed regarding the general nature and quantity of waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall require disclosure of proprietary information only as is necessary to carry out the purposes of this chapter. At least once every ten years, the Director shall review and issue written findings on the environmental compliance history of each permittee, material changes, if any, in key personnel, and technical limitations, standards, or regulations on which the original permit was based. The time period for review of each category of permits shall be established by Board regulation. If, upon such review, the Director finds that repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interests of human health or the environment, the Director shall amend or revoke the permit, in accordance herewith. Whenever such review is undertaken, the Director may amend the permit to include additional

INTRODUCED

SB556

60 limitations, standards, or conditions when the technical limitations, standards, or regulations on which  
61 the original permit was based have been changed by statute or amended by regulation or when any of  
62 the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any  
63 permit for any of the grounds listed under subsection A of § 10.1-1409.

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

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

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

72 I. No person shall allow waste to be disposed of on his property without a permit. Any person who  
73 removes trees, brush, or other vegetation from land used for agricultural, ~~or~~ forestal, *or real estate*  
74 *development* purposes shall not be required to obtain a permit if such material is deposited or placed on  
75 the same or other property of the same landowner from which such materials were cleared. *In the case*  
76 *of real estate development, such material shall only be deposited or placed in an area where*  
77 *construction is prohibited as designated on a recorded plat after the site has been inspected and*  
78 *approved by the Water Division of the Department of Environmental Quality. In addition, the developer*  
79 *of the real estate shall agree in writing to maintain the site unless the site is conveyed to a property*  
80 *owners' association or other entity. The developer of the real estate shall furnish such financial*  
81 *arrangement satisfactory to the Department to ensure performance of the maintenance obligation.* The  
82 Board shall by regulation provide for other reasonable exemptions from permitting requirements for the  
83 disposal of trees, brush and other vegetation when such materials are removed for agricultural, ~~or~~  
84 forestal, *or real estate development* purposes.

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

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

92 K. The Board shall provide for reasonable exemptions from the permitting requirements, both  
93 procedural and substantive, in order to encourage the development of yard waste composting facilities.  
94 To accomplish this, the Board is authorized to exempt such facilities from regulations governing the  
95 treatment of waste and to establish an expedited approval process. Agricultural operations receiving only  
96 yard waste for composting shall be exempt from permitting requirements provided that (i) the  
97 composting area is located not less than 300 feet from a property boundary, is located not less than  
98 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is  
99 not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural  
100 operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of  
101 finished compost generated; (iii) the total time for the composting process and storage of material that is  
102 being composted or has been composted shall not exceed eighteen months prior to its field application  
103 or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural  
104 operation notifies the Director in writing of his intent to operate a yard waste composting facility and  
105 the amount of land available for the receipt of yard waste. In addition to the requirements set forth in  
106 clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation  
107 that receives more than 6,000 cubic yards of yard waste generated from property not within the control  
108 of the owner or the operator in any twelve-month period shall be exempt from permitting requirements  
109 provided (i) the owner and operator submit to the Director an annual report describing the volume and  
110 types of yard waste received by such operation for composting and (ii) the operator shall certify that the  
111 yard waste composting facility complies with local ordinances. The Director shall establish a procedure  
112 for the filing of the notices, annual reports and certificates required by this subsection and shall  
113 prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit  
114 the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard  
115 waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or  
116 of conditioning soil shall be sold in accordance with the Virginia Fertilizer Law of 1970 (§ 3.1-74 et  
117 seq.). As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in  
118 subsection B of § 3.1-22.29.

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

121 L. The Board shall provide for reasonable exemptions from the permitting requirements, both

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

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

N. Every solid waste management facility shall be operated in compliance with the regulations promulgated by the Board pursuant to this chapter. Those portions of a facility which were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity, provided that the portions of the facility are in compliance with the requirements for liners and leachate control in effect at the time of permit issuance, and further provided that on or before October 9, 1993, the owner or operator of the solid waste management facility submits to the Director:

1. An acknowledgement that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action and financial responsibility requirements;

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

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

The portions of a facility may not be enlarged prematurely prior to October 9, 1993, to avoid compliance with state or federal regulations when such enlargement is not consistent with past operating practices, the permit or modified operating practices to ensure good management.

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

Nothing in this subsection shall alter any requirement for corrective action imposed under state or federal law or regulation, or impair the powers of the Director pursuant to § 10.1-1409.