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HOUSE BILL NO. 1911

House Amendments in [] — February 3, 1995

A BILL to amend and reenact § 10.1-1408.1 of the Code of Virginia, relating to solid waste disposal facilities.

Patrons—Bennett, Abbitt, Armstrong, Clement, Councill, Cox, Croshaw, Crouch, Deeds, Dickinson, Hargrove, Nelms, Parrish, Phillips, Reynolds, Sherwood, Shuler, Spruill, Stump, Watkins and Way; Senators: Chichester, Hawkins, Reasor, Stolle and Trumbo

Referred to Committee on 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;

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 zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § 15.1-431, 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.

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

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60 technical limitations, standards, or regulations on which the original permit was based. The time period
61 for review of each category of permits shall be established by Board regulation. If, upon such review,
62 the Director finds that repeated material or substantial violations of the permittee or material changes in
63 the permittee's key personnel would make continued operation of the facility not in the best interests of
64 human health or the environment, the Director shall amend or revoke the permit, in accordance
65 herewith. Whenever such review is undertaken, the Director may amend the permit to include additional
66 limitations, standards, or conditions when the technical limitations, standards, or regulations on which
67 the original permit was based have been changed by statute or amended by regulation or when any of
68 the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any
69 permit for any of the grounds listed under subsection A of § 10.1-1409.

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

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

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

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

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

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

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

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

120 L. The Board shall provide for reasonable exemptions from the permitting requirements, both
121 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~~ *To the extent consistent with federal law, those facilities* 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~~ *is* 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.

[Facilities which are authorized by this subsection to dispose of wastes beyond the waste boundaries existing on October 9, 1993, shall be as follows: (i) nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility; and (ii) facilities that accept only construction-demolition-debris waste as defined in the Board's regulations. The Director may prohibit or restrict the disposal of waste in facilities described in clause (i), which contains hazardous constituents as defined in applicable regulations which, in the opinion of the Director, would pose a substantial risk to health or the environment.]

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

[Facilities which are authorized under this subsection to dispose of wastes beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities under the Board's current regulations and local ordinances.]

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