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HOUSE BILL NO. 2586

Offered January 23, 1995

A BILL to amend and reenact §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1408.1:1 and a section numbered 10.1-1408.3, relating to solid waste management facility siting and inspection.

Patrons—Melvin, Christian, Connally, Crittenden, Cunningham, Jones, D.C., Jones, J.C., Robinson and Spruill; Senators: Lucas, Maxwell and Miller, Y.B.

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 10.1-1408.1:1 and 10.1-1408.3 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 *a comprehensive state solid waste management plans and plan which shall include: (i) strategies to meet the solid waste disposal needs of the Commonwealth over a period of twenty-five years; (ii) determinations as to which areas naturally present more protection for drinking water sources including, at a minimum, considerations such as depth to ground water, distance to surface water, and soil type; (iii) determinations as to the proper location of solid waste management facilities in order to protect citizens of the Commonwealth including, at a minimum, distances from homes, schools and hospitals; and (iv) projections of amounts of solid waste that will require disposal.* The Board shall 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 which 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 1.1 (§ 25-46.1 et seq.) of Title 25, 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

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60 property for a disposal site in accordance with the criteria for selection of a hazardous waste
61 management site.

62 13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste
63 management facilities.

64 14. Collect, from any person operating or using a hazardous waste management facility, fees
65 sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary.
66 All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the
67 responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste
68 management facilities.

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

75 16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for
76 the disposal, treatment or storage of nonhazardous solid waste, permit application fees sufficient to
77 defray only costs related to the issuance of permits as required in this chapter in accordance with Board
78 regulations, but such fees shall not exceed costs necessary to issue such permits. All such fees received
79 by the Board shall be used exclusively for the solid waste management program set forth herein. The
80 Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and
81 10.1-1402.3.

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

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

86 19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid
87 or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly
88 managed and to institute legal proceedings to recover the costs of the containment or clean-up activities
89 from the responsible parties.

90 20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste
91 laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the
92 purpose of responding to solid or hazardous waste incidents and clean-up of sites which have been
93 improperly managed, including sites eligible for a joint federal and state remedial project under the
94 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law
95 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law
96 99-499, and for investigations to identify parties responsible for such mismanagement.

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

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

102 § 10.1-1408.1. Permit required; open dumps prohibited.

103 A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage
104 of nonhazardous solid waste without a permit from the Director.

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

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

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

117 3. If the applicant proposes to locate the facility on property not governed by any county, city or
118 town zoning ordinance, certification from the governing body that it has held a public hearing, in
119 accordance with the applicable provisions of § 15.1-431, to receive public comment on the proposed
120 facility. Such certification shall be provided to the applicant and the Department within 120 days from
121 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. *Prior to holding such a public hearing, the Department shall hold a public information meeting at which at least one member of the Board and two members of the local governing body are present and at which a knowledgeable Department of Environmental Quality employee is available to answer questions regarding the proposed facility. The public information meeting shall be held in reasonable proximity to the community in which the facility is proposed to be located, following a minimum of thirty days' notice in a newspaper of general circulation in the area.*

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

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

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

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

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

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

J. No permit shall be required pursuant to this section for recycling or for temporary storage incidental to recycling. As used in this subsection "recycling" means any process whereby material

183 which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in
184 an industrial process to make a product, or as an effective substitute for a commercial product.

185 K. The Board shall provide for reasonable exemptions from the permitting requirements, both
186 procedural and substantive, in order to encourage the development of yard waste composting facilities.
187 To accomplish this, the Board is authorized to exempt such facilities from regulations governing the
188 treatment of waste and to establish an expedited approval process. Agricultural operations receiving only
189 yard waste for composting shall be exempt from permitting requirements provided that (i) the
190 composting area is located not less than 300 feet from a property boundary, is located not less than
191 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is
192 not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural
193 operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of
194 finished compost generated; (iii) the total time for the composting process and storage of material that is
195 being composted or has been composted shall not exceed eighteen months prior to its field application
196 or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural
197 operation notifies the Director in writing of his intent to operate a yard waste composting facility and
198 the amount of land available for the receipt of yard waste. In addition to the requirements set forth in
199 clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation
200 that receives more than 6,000 cubic yards of yard waste generated from property not within the control
201 of the owner or the operator in any twelve-month period shall be exempt from permitting requirements
202 provided (i) the owner and operator submit to the Director an annual report describing the volume and
203 types of yard waste received by such operation for composting and (ii) the operator shall certify that the
204 yard waste composting facility complies with local ordinances. The Director shall establish a procedure
205 for the filing of the notices, annual reports and certificates required by this subsection and shall
206 prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit
207 the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard
208 waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or
209 of conditioning soil shall be sold in accordance with the Virginia Fertilizer Law of 1970 (§ 3.1-74 et
210 seq.). As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in
211 subsection B of § 3.1-22.29.

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

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

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

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

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

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

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

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

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

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

254 § 10.1-1408.1:1. Prerequisite to solid waste management facility siting.

255 *The Director shall not issue a permit for a solid waste management facility without first having*
256 *received certification from the Board that the siting of the facility (i) is necessary to meet the*
257 *Commonwealth's solid waste management needs, as set out in the comprehensive state solid waste*
258 *management plan required by subdivision 4 of § 10.1-1402, and (ii) does not disproportionately impact*
259 *minority or economically disadvantaged communities. For purposes of this section, "disproportionately*
260 *impact" means locating a facility in a community in which minorities are represented in a greater*
261 *proportion than in the locality as a whole, and "economically disadvantaged" means that the per capita*
262 *income of the community is less than the state average or that the poverty rate in the community is*
263 *higher than for the locality as a whole.*

264 § 10.1-1408.3. Inspections.

265 A. All solid waste facilities shall be inspected no less frequently than once every six months.

266 B. The Board shall establish guidelines for return inspections in cases where a violation of this
267 article has been found.

268 C. An inspector shall state in writing the reason for not complying with any guideline established by
269 the Board pursuant to subsection B.