

LD1342724

SENATE BILL NO. 693

Offered January 11, 1995

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; penalty.

Patron—Potts

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;

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 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,

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

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

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

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

76 I. No person shall allow waste to be disposed of on his property without a permit. Any person who
77 removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be
78 required to obtain a permit if such material is deposited or placed on the same or other property of the
79 same landowner from which such materials were cleared. *Any person who removes trees, brush, or other*
80 *vegetation from land used for real estate development shall not be required to obtain a permit if such*
81 *material is deposited or placed on the same property of the same landowner from which such materials*
82 *were cleared and if the county, city, or town wherein the property is located has adopted an ordinance*
83 *regulating such activity as provided herein.* The Board shall by regulation provide for other reasonable
84 exemptions from permitting requirements for the disposal of trees, brush and other vegetation when such
85 materials are removed for agricultural or forestal, or real estate development purposes. *In the case of*
86 *real estate development, the governing body of any county, city or town may provide by ordinance for*
87 *on-site disposal of trees, brush, and vegetative waste in approved placement areas subject to the*
88 *following conditions:*

89 1. *Prior to issuance of a permit for vegetation placement activities, the governing body may require*
90 *the landowner to provide a statement signed by a licensed professional engineer that he has reviewed*
91 *the plans for and site of the proposed placement area and that, on this basis, he has concluded that the*
92 *proposed activity does not pose a substantial present or potential hazard to human health and the*
93 *environment, including air, surface water, or ground water.*

94 2. *Only trees, brush, and vegetative waste shall be deposited or placed in an area where*
95 *construction is prohibited as designated on a recorded plat or site plan;*

96 3. *The landowner shall employ reasonable measures to restrict access to the placement area until all*
97 *excavation, filling, and land stabilizing procedures are complete and approved as provided herein;*

98 4. *The landowner shall not fill, cover or close a placement area prior to the inspection and approval*
99 *of the placement area by an official designated by the governing body;*

100 5. *The landowner shall agree in writing to maintain the placement area until it is conveyed to a*
101 *property owners' association or other entity which will assume such obligation. The governing body may*
102 *require the submission of a reasonable maintenance bond with surety, cash escrow, letter of credit, any*
103 *combination thereof, or such other legal arrangement satisfactory to it, to ensure performance of the*
104 *maintenance obligation for a period not to exceed three years from the date of approval of final*
105 *stabilizing and closing of the placement area;*

106 6. *The governing body may charge the landowner a reasonable fee for administrative and inspection*
107 *services not to exceed an amount commensurate with the services rendered, taking into consideration the*
108 *time, skill, and administrator's expense involved; and*

109 7. *Any person convicted of depositing or placing any unauthorized material in the placement area*
110 *shall be guilty of a Class 1 misdemeanor.*

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

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

118 K. The Board shall provide for reasonable exemptions from the permitting requirements, both
119 procedural and substantive, in order to encourage the development of yard waste composting facilities.
120 To accomplish this, the Board is authorized to exempt such facilities from regulations governing the
121 treatment of waste and to establish an expedited approval process. Agricultural operations receiving only

yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated; (iii) the total time for the composting process and storage of material that is being composted or has been composted shall not exceed eighteen months prior to its field application or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural operation notifies the Director in writing of his intent to operate a yard waste composting facility and the amount of land available for the receipt of yard waste. In addition to the requirements set forth in clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator in any twelve-month period shall be exempt from permitting requirements provided (i) the owner and operator submit to the Director an annual report describing the volume and types of yard waste received by such operation for composting and (ii) the operator shall certify that the yard waste composting facility complies with local ordinances. The Director shall establish a procedure for the filing of the notices, annual reports and certificates required by this subsection and shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or of conditioning soil shall be sold in accordance with the Virginia Fertilizer Law of 1970 (§ 3.1-74 et seq.). As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in subsection B of § 3.1-22.29.

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

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 acknowledgment 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.

183 Such facilities, or portions thereof, which have reached their vertical design capacity shall be closed
184 in compliance with regulations promulgated by the Board.
185 Nothing in this subsection shall alter any requirement for corrective action imposed under state or
186 federal law or regulation, or impair the powers of the Director pursuant to § 10.1-1409.