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HOUSE BILL NO. 1329

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Conservation and Natural Resources
on February 7, 1996)

(Patron Prior to Substitute—Delegate Deeds)

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 5 of Title 10.1 an article numbered 3.1, consisting of sections numbered 10.1-559.1 through 10.1-559.11, relating to agricultural water quality protection; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 5 of Title 10.1 an article numbered 3.1, consisting of sections numbered 10.1-559.1 through 10.1-559.11 as follows:

Article 3.1.

Agricultural Stewardship Act.

§ 10.1-559.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including, but not limited to, farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land on which an agricultural activity occurs.

"Person" means an individual, a partnership, an association, a corporation or any government or unit of government.

"Pollution" means any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" means measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution which reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods or other alternatives. "Stewardship measures" includes (i) agricultural water quality protection management measures described in Virginia Agricultural Best Management Practices Implementation Program Manual and (ii) agricultural water quality protection management measures contained in the United States Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

§ 10.1-559.2. Exclusions from chapter.

This chapter shall not apply to any agricultural activity to which (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1 or (ii) a permit issued by the State Water Control Board, applies.

§ 10.1-559.3. Complaint; investigation; agricultural stewardship plan.

A. Upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district in which the land lies determine the validity of the information within 21 days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.

B. The district chairman may on behalf of the district act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.

C. If, after investigating a complaint, the district or the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, unless the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. Copies of the notice shall be sent to the district in which the agricultural activity is located. The notice shall state that, within sixty days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan which includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if

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60 the plan includes such measures, the Commissioner shall approve the plan within thirty days. The owner
61 or operator shall begin implementing the approved agricultural stewardship plan within six months of
62 the date on which he received the notice.

63 D. The plan shall include an implementation schedule, and implementation of the plan shall be
64 completed not later than 18 months after receipt of notice. However, the Commissioner may grant an
65 extension of up to 180 days if (i) a hardship exists and (ii) the request for an extension was made not
66 later than 60 days before the scheduled completion date. The Commissioner shall, within 30 days of
67 receiving the request, inform the owner or operator whether or not an extension has been granted.

68 E. If the Commissioner determines that substantial evidence does not exist to prove that an
69 agricultural activity is creating or will create pollution or that any pollution was caused by unusual
70 weather events or other exceptional circumstances, he shall inform the complainant and the owner or
71 operator of his determination. Upon approving the owner's or operator's agricultural stewardship plan,
72 the Commissioner shall inform the owner or operator and the complainant that a plan has been
73 approved.

74 § 10.1-559.4. Issuance of corrective orders.

75 A. If any owner or operator who has been issued a notice under §10.1-559.3 fails to begin actively
76 implementing an approved agricultural stewardship plan within six months of receiving the notice, the
77 Commissioner shall issue a corrective order to such owner or operator. The order shall require the
78 owner or operator to implement specified stewardship measures within a stated period of time, not to
79 exceed eighteen months from the date on which he received the notice under subsection C of
80 § 10.1-559.3.

81 B. A corrective order issued pursuant to subsection A shall be issued only after a hearing, with
82 reasonable notice being given to the owner or operator, or both, of the time, place and purpose thereof,
83 and shall become effective not less than five days after date of delivery to the last known address as
84 provided in subsection C. The corrective order shall be suspended pending appeal by the recipient made
85 within five days after delivery of such order to the last known address of the owner or operator.

86 C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt
87 requested, sent to the last known address of the owner or operator, or by personal delivery by an agent
88 of the Commonwealth.

89 D. Notwithstanding other provisions of this article, if the Commissioner determines that an
90 emergency condition exists due to runoff from an agricultural activity which is causing or is likely to
91 cause an imminent or substantial danger to (i) the public health, safety or welfare or to the health of
92 animals, fish or aquatic life; (ii) a public water supply; (iii) recreational, commercial, industrial,
93 agricultural; or (iv) other reasonable uses, the Commissioner may issue, without advance notice or
94 hearing, an emergency corrective order. Such order may direct the owner or operator of the
95 agricultural activity, or both, to cease immediately all or part of the agricultural activity, and to
96 implement specified stewardship measures or any necessary emergency measures within a stated period
97 of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the
98 opportunity for a hearing, after reasonable notice as to the time and place thereof, to the owner or
99 operator, for the purpose of affirming, modifying, amending or canceling the emergency corrective
100 order.

101 E. The Commissioner shall not issue a corrective order to any land owner or operator who is in
102 compliance with the provisions of this article if the person is:

103 1. Actively implementing the agricultural stewardship plan which has been reviewed by the district in
104 which the agricultural activity is located and approved by the Commissioner, or

105 2. Actively implementing stewardship measures that have failed to prevent pollution, if the
106 Commissioner determines that the pollution is a direct result of unusual weather events or other
107 exceptional circumstances which could not have been reasonably anticipated.

108 § 10.1-559.5. Right of entry.

109 A. The district and the Commissioner may enter land which is the subject of a complaint, after notice
110 to the owner or operator, to determine whether the agricultural activity is causing or will cause
111 pollution of state waters.

112 B. Upon failure of any owner or operator to implement stewardship measures in the time specified in
113 a corrective order, the Commissioner may present to the circuit court of the county or city in which the
114 land is located, a petition asking the court to require the owner or operator to carry out such measures
115 within a specified time. If the owner or operator fail to implement the stewardship measures specified in
116 the court order, the Commissioner or his representative may enter the land involved and implement the
117 measures. The Commissioner shall have the authority to recover the costs of implementing the
118 stewardship measures from the owner or operator.

119 § 10.1-559.6. Appeal.

120 Decisions of the Commissioner may be appealed by persons aggrieved to the Virginia Soil and Water
121 Conservation Board and thereafter to the circuit court in accordance with the Administrative Process

Act (§ 9-6.14:1 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

§ 10.1-559.7. Penalties; injunctions; enforcement actions.

A. Any person violating §§ 10.1-559.4 or 10.1-559.5 shall be subject to a civil penalty not to exceed \$5,000.00 for every violation assessed by the Commissioner or Board. Each day the violation continues shall constitute a separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Implementation Program Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, consideration shall be given to willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this article.

§ 10.1-599.8. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record.

§10.1-559.9. Guidelines to be published by Commissioner, report.

A. The Commissioner shall within 120 days of the effective date of this section develop and publish guidelines to be used in implementing this article for use by districts and Department of Agriculture and Consumer Services officials. He shall do so in consultation with interested parties, including districts and the Department.

B. The Commissioner shall compile a report by December 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties which may have been assessed. The Commissioner shall (i) provide the report to Board, the Department and to every district, (ii) publish notice in the Virginia Register that the report is available and (iii) make the report available to the public upon request.

§ 10.1-559.10. Local ordinances.

A. Any county, city or town may adopt an ordinance creating a complaint, investigation and agricultural stewardship plan development program. Ordinances adopted pursuant to this section may contain only provisions which parallel §§ 10.1-559.2, and 10.1-559.3 No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in § 10.1-559.3.

B. This section shall not apply to any ordinance (i) in existence on July 1, 1996, or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

§ 10.1-599.11. Construction of article.

Nothing in this article shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act.