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HOUSE BILL NO. 1413

Offered January 22, 1996

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 10.1-559.10, relating to agricultural water quality protection.

Patron—Murphy

Referred to Committee on Conservation and Natural Resources

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 10.1-559.10 as follows:

Article 3.1.

Virginia Agricultural Water Quality Protection.

§ 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, or fish farming activities.

"Agricultural pollutants" means soils, sediments, animal wastes, salts, pesticides and nutrients such as nitrate, phosphorus and potassium which adversely affect water quality and cause such damage as flow alteration, aquatic habit degradation and riparian area damage.

"Corrective order" means an order issued by the Director of the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

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

§ 10.1-559.2. Conduct of Agricultural Activities.

A. Upon receiving information that an owner or operator may be or is conducting or allowing a person to conduct any agricultural activity in a manner that is not in conformity with the management measures defined in § 10.1-559.1, the Director shall request that the directors of the district, in which the land lies, determine the validity of the information. The district directors may act upon or reject the request. If the district directors decline to act, they shall, within five days so advise the Director who shall determine the validity of the information.

B. If the district or the Director determines that an owner or operator is conducting or allowing a person to conduct any agricultural activity in a manner that is not in conformity with the state management measures, the Director shall notify the land owner or operator by registered mail, return receipt requested. Copies of such notice shall be sent to the District in which the land lies. The notice shall indicate that within six months of the receipt of the notice the landowner or operator shall begin implementing a site-specific conservation plan, approved by the district, which includes corrective measures needed to prevent or cease the pollution.

C. The District and the Director are authorized to go on the involved lands, after notice to the owner or operator, to determine whether the agricultural activity is being conducted in a manner that is not in conformity with the state management measures.

§ 10.1-559.3. Development of plan; district to assist.

The District in which the involved lands lie shall, upon request of the owner or operator of such lands issued a notice under § 3.1-559.2, assist such owner or operator in developing a site-specific conservation plan for corrective measures. The plan shall include an implementation schedule.

§ 10.1-559.4. Failure to adopt plan; corrective order.

If the land owner or operator fails to adopt the site specific conservation plan for corrective measures and fails to begin actively implementing the plan within six months from receipt of the notification, the Director shall issue a corrective order to the land owner or operator.

§ 10.1-559.5. Issuance of Corrective Orders.

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60 A. The Director may, upon determining that a land owner or operator has failed to begin actively
61 implementing an approved site-specific conservation plan, issue a corrective order to any owner or
62 operator who is conducting, or allowing to be conducted, any agricultural activity that is not in
63 conformity with the state management measures. Such order shall require the owner or operator to
64 implement specified corrective measures within a stated period of time.

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

70 C. The Director shall notify the owner or operator to whom a corrective order is issued by certified
71 mail, return receipt requested, sent to the last known address of the owner or operator, or by personal
72 delivery by an agent of the state. The time limits specified shall be counted from date of delivery to the
73 last known address.

74 D. Notwithstanding other provisions of this article, if the Director determines that an emergency
75 condition exists due to the actions of any owner or operator who is conducting any agricultural activity
76 in a manner which is not in conformity with the state management measures, runoff from which is
77 causing or is likely to cause an imminent or substantial danger to (i) the public health, safety or welfare
78 to the health of animals, fish or aquatic life (ii) a public water supply; (iii) recreational, commercial,
79 industrial, agricultural, or (iv) other reasonable uses, the Director may issue, without advance notice or
80 hearing, an emergency corrective order. Such an order may direct the owner or operator, or both, to
81 cease immediately all or part of the agricultural activities on the site, and to implement specified
82 corrective measures within a stated period of time. Following the issuance of an emergency corrective
83 order, the Director shall provide the opportunity for a hearing, after reasonable notice as to the time
84 and place thereof, to the owner or operator of the lands involved, for the purpose of affirming,
85 modifying, amending or canceling the emergency corrective order.

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

88 1. Actively implementing management measures that have failed to prevent pollution, upon
89 determination by the Director that the pollution is a direct result of unusual weather events or other
90 exceptional circumstances which could not have been reasonably anticipated; or;

91 2. Actively implementing an approved site-specific conservation plan.

92 § 10.1-559.6. Right of entry to implement corrective measures.

93 Upon failure of the land owner or operator to implement corrective measures in the time specified in
94 the corrective order, the Director may present to the circuit court of the county or city in which the
95 land is located, a petition asking the court to require the affected owner or operator to carry out the
96 corrective measures set out in the corrective order within a specified time. If such owner or operator
97 fails to perform the corrective action, the Director or his representative may enter the land involved and
98 implement the corrective action. The Director shall have the authority to recover the costs of the
99 corrective action from the land owner or operator.

100 § 10.1-559.7. Appeal.

101 Decisions of the Director may be appealed to the Virginia Soil and Water Conservation Board and
102 to the circuit court pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.). The imposition of
103 any civil penalty shall be suspended pending such appeals.

104 § 10.1-559.8. Penalties; injunctions; enforcement actions.

105 A. Any person violating §§ 10.1-559.5 and 10.1-559.6 of this article shall be subject to a civil
106 penalty not to exceed \$5,000.00 for every violation. Each day the violation continues shall constitute a
107 separate offense. Payments to satisfy such penalties shall be deposited in the Virginia Agricultural
108 Water Quality Fund established in § 10.1-559.9.

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

113 C. The Attorney General shall, upon request of the state agency, bring an action for an injunction or
114 other appropriate legal action on behalf of the Department of Conservation and Recreation to enforce
115 the provisions of this article.

116 § 10.1-559.9. Virginia Agricultural Water Quality Fund established; uses.

117 There is hereby established a special, nonlapsing fund in the state treasury to be known as the
118 Virginia Agricultural Water Quality Fund, referred hereinafter as the Fund, to be used by the
119 Department for monitoring the effects of agricultural practices on water quality and for water
120 quality-related educational activities. The Director may expend moneys in the Fund for corrective
121 actions taken under § 10.1-559.6 only when such expenditures are matched by private donations. All

122 *civil penalties assessed and collected under § 10.1-559.8 and reimbursements for corrective measures*
123 *taken by the Department pursuant to § 10.1-559.6 shall be deposited into the Fund. Interest earned in*
124 *the Fund shall be credited to the Fund. The Fund shall be established in the books of the Comptroller*
125 *and any funds remaining in the Fund at the end of the biennium shall not revert to the general fund but*
126 *shall remain in the Fund.*

127 *§10.1-559.10. Promulgation of Regulations.*

128 *The Virginia Soil and Water Conservation Board shall promulgate regulations pursuant to the*
129 *Administrative Process Act (§ 9-6.14:1 et seq.) to carry out the provisions of this article.*