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HOUSE BILL NO. 1505

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture
on February 8, 1996)

(Patron Prior to Substitute—Delegate Armstrong)

A BILL to amend and reenact §§ 3.1-106.4 and 32.1-164.5 of the Code of Virginia, relating to the regulation of fertilizers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-106.4 and 32.1-164.5 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-106.4. Authority of the Board and the Commissioner to adopt regulations.

A. The Board is authorized to promulgate such regulations as may be necessary to give effect to the full intent and meaning of this chapter. Such regulations may relate, by way of example, but not by way of limitation, to investigational allowances, definitions, records, and manufacturing practices, and to the distribution and storage of regulated product prior to final sale.

B. The Commissioner may adopt as a regulation the Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food Control Officials. The Commissioner may adopt as a regulation the methods of sampling and analysis for regulated products adopted by the Association of Official Analytical Chemists. The Commissioner may adopt as a regulation any method of sampling and analysis for a regulated product developed by the Department or adopted by agencies of the federal government, agencies of other states, the Division of Consolidated Laboratories or other commercial laboratories accredited by the Food and Drug Administration, United States Department of Agriculture or Association of Official Analytical Chemists. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. However, the regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation. The Commissioner shall provide notice by first-class mail of regulations adopted by him pursuant to this section after June 30, 1995, to all manufacturers of currently registered regulated product.

C. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to subsection B or C of this section.

D. Except as provided in this subsection, the manufacture, sale, distribution and use of any regulated product shall be regulated, prohibited or restricted only to the extent and in the manner provided in this title. Nothing in this subsection shall supersede any requirement of this Code administered by any state agency for the protection of health, safety or the environment or any provision of § 32.1-164.5.

§ 32.1-164.5. Land application, marketing and distribution of sewage sludge; regulations.

A. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the State Water Control Board or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.

B. The Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation, shall promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing or distribution is properly treated or stabilized, (ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect public health and the environment, and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, will be prevented.

C. Regulations promulgated by the Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation pursuant to subsection B of this section, shall include:

1. Requirements and procedures for the issuance and amendment of permits as required by this section;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

60 3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or
61 distribution;

62 4. Requirements for determining the suitability of land application sites and facilities used in land
63 application, marketing or distribution of sewage sludge;

64 5. Required procedures for land application, marketing and distribution of sewage sludge;

65 6. Requirements for sampling, analysis, record keeping and reporting in connection with land
66 application, marketing and distribution of sewage sludge;

67 7. Provisions for notification of local governing bodies to ensure compliance with §§ 32.1-164.2 and
68 62.1-44.15:3;

69 8. Conditions where a nutrient management plan approved by the Department of Conservation and
70 Recreation may be required.

71 D. The Board of Health shall adopt regulations in accordance with this section not later than October
72 1, 1994. The Board of Health may adopt, as final, proposed regulations that were the subject of public
73 notice and for which one or more public hearings or informational meetings were held in accordance
74 with the Administrative Process Act (§ 9-6.14:1 et seq.) after July 1, 1993, and prior to September 30,
75 1994.

76 E. The Board may adopt regulations prescribing a reasonable fee not to exceed \$2,500 to be charged
77 for the direct and indirect costs associated with the processing of an application to issue, reissue, amend
78 or modify any permit to land apply, distribute or market sewage sludge pursuant to this section.

79 F. There is hereby established in the treasury a special fund to be known as the Sludge Management
80 Permit Fee Fund, hereinafter referred to as the fund. The fees required by this section shall be
81 transmitted to the Comptroller to be deposited into the fund. The income and principal of the fund shall
82 be used only and exclusively for the direct and indirect costs associated with the processing of an
83 application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage
84 sludge. The State Treasurer shall be the custodian of the moneys deposited in the fund. No part of the
85 fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

86 G. Any permit, certificate or authorization for the land application, marketing or distribution of
87 sewage sludge issued prior to October 1, 1994, shall remain in effect for the remainder of the term
88 specified in such permit, certificate or authorization. Such permits, certificates and authorizations may be
89 amended in accordance with the Administrative Process Act (9-6.14:1 et seq.). Any amendment after the
90 adoption of the regulations specified in this section shall be in accordance with such regulations.

91 *H. Any county, city or town may regulate the infrequent land application of sewage sludge within its*
92 *jurisdiction by adopting the following ordinance which, after December 31, 1996, shall serve as the only*
93 *ordinance under which localities are authorized to regulate the infrequent land application of sewage*
94 *sludge. Any county, city or town which has adopted an ordinance regulating the infrequent land*
95 *application of sewage sludge prior to July 1, 1996, shall amend the ordinance to conform it to the*
96 *following ordinance no later than December 31, 1996.*

97 *Model Ordinance for the Regulation of*
98 *Infrequent Land Application of Sewage Sludge.*

99 § 1. The governing body of(county, city or town), acting pursuant to Article 1 (§ 32.1-163
100 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia, adopts this ordinance regulating the
101 infrequent land application of sewage sludge.

102 § 2. As used in this ordinance, unless the context requires a different meaning:

103 "Sewage sludge" means sludge that meets all criteria for land application on agricultural and forest
104 land as specified by applicable state and federal regulations. The definition does not include "Class I"
105 sludge which meets regulatory criteria for distribution and marketing.

106 "Land application of sewage sludge" means the application of sewage sludge at agronomic rates, as
107 part of an established program for application of nutrients on land used for agriculture or silviculture.

108 "Infrequent land application" means application to the same tract at a frequency not exceeding once
109 every three years.

110 "Surface application" means land application of sludge by a method that does not include either
111 subsurface injection or incorporation into the soil within twenty-four hours of application.

112 § 3. Infrequent land application of sewage sludge is prohibited in (county, city or town)
113 unless authorized by a valid land application permit issued pursuant to this ordinance.

114 § 4. Any person seeking to obtain a permit for infrequent land application of sewage sludge shall
115 make written application to (administrative official selected by jurisdiction). The application
116 shall include the following:

117 1. Name, address and telephone number of applicant. If the applicant is a company or corporation,
118 the applicant shall include the name, title and telephone number of the person or persons who will be
119 responsible for land application activities under the permit;

120 2. Copies of the application and all supporting information submitted to regulatory agencies in
121 connection with the activities described in the application. This information shall include, without

limitation, a copy of the applicant's approved operations and maintenance manual incorporating procedures for sampling and analysis of sludge and soils, spill prevention and cleanup procedures and analytical data pertaining to sources of sludge proposed for land application within this (county, city or town). The applicant shall also include copies of all site-specific information pertaining to permitted activities, including land routes, site maps, proposed crops, and methods of application;

3. Written consent by the owners of land to which sludge will be applied; and

4. Proof of current insurance satisfying the requirements in this ordinance.

§ 5. The application, as well as any application for amendment of the permit, shall be accompanied by a \$200.00 application fee and a two dollar per acre site processing fee, which fee shall not exceed \$1,000. The fees shall be applied solely to defray the costs of processing the application and issuing the permit.

§ 6. The permit shall be issued within sixty days of receipt of the application, unless the (administrative official designated in § 4) determines that the applicant has submitted information which is materially incomplete, deficient or incorrect; in such case, the application shall be promptly returned with an explanation of the reasons for its denial, and the applicant shall be given an opportunity to submit complete or corrected information.

§ 7. The permit shall be valid for a term of five years, unless sooner revoked for cause in accordance with this ordinance.

§ 8. The permit may include the following conditions, as determined by the (administrative official designated in § 4):

1. All land application activities in (county, city or town) shall be conducted in compliance with the conditions of the permit, this ordinance and all applicable state and federal regulations;

2. The applicant shall notify the (administrative official designated in § 4), in writing, at least forty-five days prior to any material change in the operations described in the application;

3. The applicant shall immediately notify the (administrative official designated in § 4) of any change in ownership of the applicant or in responsible personnel designated in the original application, or in the data submitted with the application;

4. The permittee shall provide contemporaneous copies of all data, reports and information submitted in accordance with state or federal regulatory requirements;

5. The permittee shall provide a general schedule of application in the (county, city or town) to the (administrative official designated in § 4) and shall promptly notify the (administrative official designated in § 4) of any changes to the schedule;

6. The permittee shall not undertake surface application of sludge within 400 feet of an occupied dwelling unless the permittee has provided the (administrative official designated in § 4) with written documentation that the owner of the dwelling consents to the application in accordance with buffers established pursuant to state regulation.

7. The permittee shall immediately report to the (administrative official designated in § 4) any complaints or notices of violation received in connection with land application activities conducted under the permit;

8. The permittee shall reimburse the (county, city or town) for the actual and reasonable costs of sampling and analyzing sludge that is land applied pursuant to the permit, but shall not be required to do so more than monthly during those months when the permittee is conducting activities in (county, city or town);

9. The permittee shall pay a fee of two dollars for each acre to which sludge is applied in the (county, city or town) within thirty days of applying the sludge. The fee shall be used solely to pay the actual and direct costs of the monitoring and inspection activities other than the sampling and analysis for which reimbursement is received by (county, city or town) under subdivision 8, to ensure compliance with (the ordinance) and this permit.

10. The operations shall comply with an approved Water Quality Management Plan;

11. The permit shall not be transferred without the written concurrence of the (administrative official designated in § 4);

12. An amendment of the permit shall be required for the addition of new sludge sources or the addition of sites to which sludge will be applied; and

13. The permittee shall not be relieved of liability for any injuries, damages, losses or costs arising from activities authorized by the permit.

§ 9. Land application of sewage sludge shall not be conducted unless the permittee has in effect liability insurance in the amount of at least one million dollars aggregate per occurrence, covering all losses and claims arising from the land application or transportation of sludge and all related activities. Such insurance shall be maintained in force and effect throughout the term of any permit issued under this ordinance. The (administrative official designated in § 4) shall be promptly notified of any claims or cancellations.

183 § 10. Sludge shall not be stored for more than (specify period of time, 48 hours or more)
184 except in a facility permitted for sludge storage under state regulations. The (administrative
185 official designated in § 4), at the request of a permittee, may allow temporary storage for a longer
186 period in case of an emergency caused by severe weather or other unforeseen circumstances.

187 § 11. A. The (administrative official designated in § 4) may suspend or revoke a permit for
188 cause.

189 B. The following constitute cause for suspension of a permit:

- 190 1. Violation of a permit term or condition;
191 2. Violation of this ordinance, or of any applicable federal or state regulation;
192 3. Failure to pay any fee required under this ordinance; and
193 4. Failure to maintain liability insurance as required by this ordinance.

194 C. The following constitute cause for revocation of a permit:

195 1. Failure to correct a condition which resulted in permit suspension within thirty workdays after the
196 notice of suspension;

197 2. Knowingly falsifying any information which is required to be submitted under this ordinance or
198 as a condition of the permit; and

199 3. Serious or repeated violations of the permit, this ordinance or state or federal regulations which,
200 in the opinion of the (administrative official designated in § 4) demonstrate the permittee's
201 disregard for or inability to comply with the permit, the ordinance or applicable laws, regulations and
202 requirements.