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## HOUSE BILL NO. 2471

Offered January 21, 1999

A BILL to amend and reenact § 10.1-1455 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 10.1-1408.3 through 10.1-1408.6, relating to solid waste management and enforcement.

Patrons—Morgan, Davis, Guest and Marshall

Referred to Committee on Conservation and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That § 10.1-1455 the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 10.1-1408.3 through 10.1-1408.6 as follows:**

§ 10.1-1408.3. Caps on levels of disposal.

A. The amount of municipal solid waste received at any landfill authorized to accept such waste shall not exceed 2,000 tons per day, or the average actual amount of municipal solid waste received by such landfill on a daily basis during 1998, as reported to the Department of Environmental Quality pursuant to § 10.1-1413.1, whichever is greater, unless the landfill has received approval from the Board pursuant to subsection B for a larger tonnage allotment. The "average actual amount" shall be calculated by dividing the 1998 volume reported pursuant to § 10.1-1413.1 by the number of days the landfill received solid waste in 1998.

B. In considering requests for increased tonnage allotments, the Board shall consider those factors set forth in subsection D of § 10.1-1408.1 and other factors it deems appropriate to protect the health, safety and welfare of the people of Virginia and Virginia's environmental and natural resources.

No request for an increased tonnage allotment shall be approved by the Board until a public hearing on the proposed increase has been held in the locality where the landfill requesting the increase is located.

C. The provisions of this section shall not be construed as allowing activities related to waste disposal that exceed those that may be found in state or local permits, regulations, ordinances, agreements, contracts or other instruments related to particular facilities or localities.

§ 10.1-1408.4. Caps on capacity.

Notwithstanding any other provision of law, the Director shall not issue any permit for a new landfill designated to receive municipal solid waste until there exists within the Commonwealth less than a ten-year supply of municipal solid waste disposal capacity. Disposal capacity shall be estimated by the Department based on permitted landfill capacity, waste to energy facility capacity, recycling rates, disposal rates and such other factors as the Department deems appropriate.

§ 10.1-1408.5. Importation of waste.

Upon passage of any federal act authorizing limitations on the importation and disposal of out-of-state solid waste, the Board shall implement the federal act to the fullest extent authorized therein to limit such importation and disposal.

§ 10.1-1408.6. Special provisions regarding wetlands.

A. The Director shall not issue any permit for a solid waste management facility designed to accept municipal solid waste that would be sited in a location that would impact wetlands either through filling or by altering hydrology or water quality.

B. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management facility accepting municipal solid waste that was constructed on a wetland area, has a potential hydrologic connection to a wetland area in the event of an escape of liquids from the facility, or is within a mile of a wetland or other state waters. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. All results shall be reported to the Department of Environmental Quality.

§ 10.1-1455. Penalties and enforcement.

A. Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than \$25,000 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

B. In addition to the penalties provided above, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste

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60 without a permit or in violation of a permit; or who knowingly makes any false statement or  
61 representation in any application, disclosure statement, label, manifest, record, report, permit, or other  
62 document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty  
63 of a felony punishable by a term of imprisonment of not less than one year nor more than five years  
64 and a fine of not more than \$25,000 for each violation, either or both. The provisions of this subsection  
65 shall be deemed to constitute a lesser included offense of the violation set forth under subsection H.

66 Each day of violation of each requirement shall constitute a separate offense.

67 C. The Board is authorized to issue orders to require any person to comply with the provisions of  
68 any law administered by the Board, the Director or the Department, any condition of a permit or  
69 certification, or any regulations promulgated by the Board or to comply with any case decision, as  
70 defined in § 9-6.14:4, of the Board or Director. Any such order shall be issued only after a hearing with  
71 at least thirty days' notice to the affected person of the time, place and purpose thereof. Such order shall  
72 become effective not less than fifteen days after mailing a copy thereof by certified mail to the last  
73 known address of such person. The provisions of this section shall not affect the authority of the Board  
74 to issue separate orders and regulations to meet any emergency as provided in § 10.1-1402.

75 D. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or  
76 order of the Board or the Director, any condition of a permit or certification or any provision of this  
77 chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

78 Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the  
79 Board or the Director, any condition of a permit or certification or any provision of this chapter may be  
80 compelled in a proceeding instituted in an appropriate court by the Board or the Director to obey such  
81 regulation, permit, certification, order or provision of this chapter and to comply therewith by injunction,  
82 mandamus, or other appropriate remedy.

83 E. Without limiting the remedies which may be obtained in this section, any person violating or  
84 failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to  
85 this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for  
86 each violation. Such civil penalties shall be paid into the state treasury and deposited by the State  
87 Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this  
88 title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties  
89 may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county,  
90 city or town in which the violation occurred, to be used to abate environmental pollution in such manner  
91 as the court may, by order, direct, except that where the owner in violation is the county, city or town  
92 itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by  
93 the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25  
94 of this title.

95 F. With the consent of any person who has violated or failed, neglected or refused to obey any  
96 regulation or order of the Board or the Director, any condition of a permit or any provision of this  
97 chapter, the Board may provide, in an order issued by the Board against such person, for the payment of  
98 civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such  
99 civil charges shall be instead of any appropriate civil penalty which could be imposed under this section.  
100 Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the  
101 Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

102 G. In addition to all other available remedies, the Board may issue ~~special administrative~~ orders, as  
103 defined in ~~§ 10.1-1182~~, for the violation of: (i) any law or regulation administered by the Board; (ii) any  
104 condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of  
105 the Board. ~~The Board may issue special orders only after at least two consecutive notices of the same~~  
106 ~~violations have been issued without satisfactory compliance and a fact finding proceeding has been held~~  
107 ~~with reasonable notice to the affected persons of the time, place and purpose thereof. Special orders~~  
108 *Orders issued pursuant to this subsection may include penalties of up to \$ 25,000 per violation and may*  
109 *compel the taking of corrective actions or the cessation of any activity upon which the order is based.*  
110 *Each day of violation shall constitute a separate violation. Orders issued pursuant to this subsection*  
111 *shall become effective five days after having been delivered to the affected persons or mailed by*  
112 *certified mail to the last known address of such persons. Should the Board find that any person is*  
113 *adversely affecting the public health, safety or welfare, or the environment, the Board shall, after a*  
114 *reasonable attempt to give notice, declare a state of emergency and may issue, without a hearing, an*  
115 *emergency special administrative order directing the person to cease the activity immediately and*  
116 *undertake any needed corrective action, and shall within ten days hold a hearing, after reasonable notice*  
117 *as to the time and place thereof to the person, to affirm, modify, amend or cancel the emergency special*  
118 *administrative order. If the Board finds that a person who has been issued a special an administrative*  
119 *order or an emergency special administrative order is not complying with the special order's terms, the*  
120 *Board may utilize the enforcement and penalty provisions of this article to secure compliance.*

121 H. In addition to all other available remedies, the Department and generators of recycling residues

shall have standing to seek enforcement by injunction of conditions which are specified by applicants in order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

I. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

J. Criminal prosecutions under this chapter shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

K. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.