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HOUSE BILL NO. 2471

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Conservation and Natural Resources
on February 5, 1999)

(Patron Prior to Substitute—Delegate Morgan)

A BILL to amend and reenact § 10.1-1455 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1408.3, relating to solid waste management and enforcement; penalties.

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 a section numbered 10.1-1408.3 as follows:

§ 10.1-1408.3. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a location which would qualify as a resource protection area under regulations developed by the Chesapeake Bay Local Assistance Board, whether or not the area is in "Tidewater Virginia" as defined in § 10.1-2101.

B. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is within a mile of such a wetland. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the Director. All results shall be reported to the Department of Environmental Quality.

C. This section shall not apply to landfills which impact less than 1.25 acres of nontidal wetlands.

D. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

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

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

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

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

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

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60 mandamus, or other appropriate remedy.

61 E. Without limiting the remedies which may be obtained in this section, any person violating or
62 failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to
63 this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for
64 each violation. Such civil penalties shall be paid into the state treasury and deposited by the State
65 Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this
66 title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties
67 may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county,
68 city or town in which the violation occurred, to be used to abate environmental pollution in such manner
69 as the court may, by order, direct, except that where the owner in violation is the county, city or town
70 itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by
71 the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25
72 of this title.

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

80 G. In addition to all other available remedies, the Board may issue ~~special administrative orders~~, as
81 ~~defined in § 10.1-1182~~, for the violation of: (i) any law or regulation administered by the Board; (ii) any
82 condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of
83 the Board. ~~The Board may issue special orders only after at least two consecutive notices of the same~~
84 ~~violations have been issued without satisfactory compliance and a fact finding proceeding has been held~~
85 ~~with reasonable notice to the affected persons of the time, place and purpose thereof. Special orders~~
86 *Issuance of an administrative order shall be a case decision as defined in § 9-6.14:4. Orders issued*
87 *pursuant to this subsection may include penalties of up to \$ 25,000 per violation and may compel the*
88 *taking of corrective actions or the cessation of any activity upon which the order is based. Orders*
89 *issued pursuant to this subsection shall become effective five days after having been delivered to the*
90 *affected persons or mailed by certified mail to the last known address of such persons. Should the Board*
91 *find that any person is adversely affecting the public health, safety or welfare, or the environment, the*
92 *Board shall, after a reasonable attempt to give notice, declare a state of emergency and may issue,*
93 *without a hearing, an emergency special administrative order directing the person to cease the activity*
94 *immediately and undertake any needed corrective action, and shall within ten days hold a hearing, after*
95 *reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the*
96 *emergency special administrative order. If the Board finds that a person who has been issued a special*
97 *an administrative order or an emergency special administrative order is not complying with the special*
98 *order's terms, the Board may utilize the enforcement and penalty provisions of this article to secure*
99 *compliance.*

100 H. In addition to all other available remedies, the Department and generators of recycling residues
101 shall have standing to seek enforcement by injunction of conditions which are specified by applicants in
102 order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

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

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

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