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## HOUSE BILL NO. 2555

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Conservation and Natural Resources  
on February 3, 1999)(Patrons Prior to Substitute—Delegates Cox, Williams [HB 2453], Marshall [HB 1773], and Morgan [HB  
2471])*A BILL to amend and reenact § 10.1-1408.1 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 facilities.***Be it enacted by the General Assembly of Virginia:****1. That § 10.1-1408.1 of 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:**

§ 10.1-1408.1. Permit required; open dumps prohibited.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage  
of nonhazardous solid waste without a permit from the Director.B. No application for a new solid waste management facility permit shall be complete unless it  
contains the following:1. Certification from the governing body of the county, city or town in which the facility is to be  
located that the location and operation of the facility are consistent with all applicable ordinances. The  
governing body shall inform the applicant and the Department of the facility's compliance or  
noncompliance not more than 120 days from receipt of a request from the applicant. No such  
certification shall be required for the application for the renewal of a permit or transfer of a permit as  
authorized by regulations of the Board;2. A disclosure statement, except that the Director, upon request and in his sole discretion, and when  
in his judgment other information is sufficient and available, may waive the requirement for a disclosure  
statement for a captive industrial landfill when such a statement would not serve the purposes of this  
chapter;3. If the applicant proposes to locate the facility on property not governed by any county, city or  
town zoning ordinance, certification from the governing body that it has held a public hearing, in  
accordance with the applicable provisions of § ~~15.1-431~~ 15.2-2204, to receive public comment on the  
proposed facility. Such certification shall be provided to the applicant and the Department within 120  
days from receipt of a request from the applicant;4. If the applicant proposes to operate a new sanitary landfill or transfer station, a statement,  
including a description of the steps taken by the applicant to seek the comments of the residents of the  
area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and  
operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken  
prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or  
transfer station as required by the Department's solid waste management regulations. The public  
comment steps shall include publication of a public notice once a week for two consecutive weeks in a  
newspaper of general circulation serving the locality where the sanitary landfill or transfer station is  
proposed to be located and holding at least one public meeting within the locality to identify issues of  
concern, to facilitate communication and to establish a dialogue between the applicant and persons who  
may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice  
shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary  
landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time  
and location of the public meeting the applicant will hold and the name, address and telephone number  
of a person employed by the applicant, who can be contacted by interested persons to answer questions  
or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The  
first publication of the public notice shall be at least fourteen days prior to the public meeting date.The provisions of this subdivision shall not apply to applicants for a permit to operate a new captive  
industrial landfill or a new construction-demolition-debris landfill;5. If the applicant is a local government or public authority that proposes to operate a new municipal  
sanitary landfill or transfer station, a statement, including a description of the steps taken by the  
applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station  
is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer  
station. The public comment steps shall be taken prior to filing with the Department the notice of intent  
to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid  
waste management regulations. The public comment steps shall include the formation of a citizens'  
advisory group to assist the locality or public authority with the selection of a proposed site for the  
sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks

60 in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is  
61 proposed to be located, and holding at least one public meeting within the locality to identify issues of  
62 concern, to facilitate communication and to establish a dialogue between the applicant and persons who  
63 may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice  
64 shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary  
65 landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time  
66 and location of the public meeting the applicant will hold and the name, address and telephone number  
67 of a person employed by the applicant, who can be contacted by interested persons to answer questions  
68 or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The  
69 first publication of the public notice shall be at least fourteen days prior to public meeting date. For  
70 local governments that have zoning ordinances, such public comment steps as required under  
71 §§ ~~15.1-431~~ 15.2-2204 and ~~15.1-493~~ 15.2-2285 shall satisfy the public comment requirements for public  
72 hearings and public notice as required under this section. Any applicant which is a local government or  
73 public authority that proposes to operate a new transfer station on land where a municipal sanitary  
74 landfill is already located shall be exempt from the public comment requirements for public hearing and  
75 public notice otherwise required under this section;

76 C. Notwithstanding any other provision of law:

77 1. Every holder of a permit issued under this article who has not earlier filed a disclosure statement  
78 shall, prior to July 1, 1991, file a disclosure statement with the Director.

79 2. Every applicant for a permit under this article shall file a disclosure statement with the Director,  
80 together with the permit application or prior to September 1, 1990, whichever comes later. No permit  
81 application shall be deemed incomplete for lack of a disclosure statement prior to September 1, 1990.

82 3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition  
83 that renders any portion of the disclosure statement materially incomplete or inaccurate.

84 4. The Director, upon request and in his sole discretion, and when in his judgment other information  
85 is sufficient and available, may waive the requirements of this subsection for a captive industrial waste  
86 landfill when such requirements would not serve the purposes of this chapter.

87 D. ~~No 1. Except as provided in subdivision D2, no permit for a new solid waste management facility~~  
88 ~~nor any amendment to a permit allowing facility expansion or an increase in capacity shall be issued~~  
89 ~~until the Director has determined, after an investigation and analysis of the potential human health,~~  
90 ~~environmental, transportation infrastructure, and transportation safety impacts and needs and an~~  
91 ~~evaluation of comments by the host local government, other local governments and interested persons,~~  
92 ~~that (i) the proposed facility poses no substantial, expansion, or increase protects present or potential~~  
93 ~~danger to and future human health or safety and the environment; (ii) there is a need for the~~  
94 ~~additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the~~  
95 ~~increase is consistent with requirements of § 10.1-1408.3; (v) the public interest will be served by the~~  
96 ~~proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the~~  
97 ~~additional capacity is consistent with regional and local solid waste management plans developed~~  
98 ~~pursuant to § 10.1-1411. The Department shall hold a public hearing within the said county, city or~~  
99 ~~town prior to the issuance of any such permit for the management of nonhazardous solid waste.~~  
100 ~~Subdivision D2, in lieu of this subdivision, shall apply to nonhazardous industrial solid waste~~  
101 ~~management facilities owned or operated by the generator of the waste managed at the facility, and that~~  
102 ~~accept only waste generated by the facility owner or operator. The Board shall have the authority to~~  
103 ~~promulgate regulations to implement this subdivision.~~

104 2. No new permit for a nonhazardous industrial solid waste management facility that is owned or  
105 operated by the generator of the waste managed at the facility, and that accepts only waste generated  
106 by the facility owner or operator, shall be issued until the Director has determined, after investigation  
107 and evaluation of comments by the local government, that the proposed facility poses no substantial  
108 present or potential danger to human health or the environment. The Department shall hold a public  
109 hearing within the county, city or town where the facility is to be located prior to the issuance of any  
110 such permit for the management of nonhazardous industrial solid waste.

111 E. The permit shall contain such conditions or requirements as are necessary to comply with the  
112 requirements of this Code and the regulations of the Board and to ~~prevent a substantial~~ protect present  
113 ~~or potential hazard to and future human health and the environment.~~

114 The Director may include in any permit such recordkeeping, testing and reporting requirements as are  
115 necessary to ensure that the local governing body of the county, city or town where the waste  
116 management facility is located is kept timely informed regarding the general nature and quantity of  
117 waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall  
118 require disclosure of proprietary information only as is necessary to carry out the purposes of this  
119 chapter. At least once every ten years, the Director shall review and issue written findings on the  
120 environmental compliance history of each permittee, material changes, if any, in key personnel, and  
121 technical limitations, standards, or regulations on which the original permit was based. The time period

for review of each category of permits shall be established by Board regulation. If, upon such review, the Director finds that repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interests of human health or the environment, the Director shall amend or revoke the permit, in accordance herewith. Whenever such review is undertaken, the Director may amend the permit to include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation or when any of the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any permit for any of the grounds listed under subsection A of § 10.1-1409.

F. There shall exist no right to operate a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste or hazardous waste within the Commonwealth. Permits for solid waste management facilities shall not be transferable except as authorized in regulations promulgated by the Board. The issuance of a permit shall not convey or establish any property rights or any exclusive privilege, nor shall it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state, or local law or regulation.

G. No person shall dispose of solid waste in open dumps.

H. No person shall own, operate or allow to be operated on his property an open dump.

I. No person shall allow waste to be disposed of on his property without a permit. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be required to obtain a permit if such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared. The Board shall by regulation provide for other reasonable exemptions from permitting requirements for the disposal of trees, brush and other vegetation when such materials are removed for agricultural or forestal purposes.

When promulgating any regulation pursuant to this section, the Board shall consider the character of the land affected, the density of population, *and* the volume of waste to be disposed, as well as other relevant factors.

J. No permit shall be required pursuant to this section for recycling or for temporary storage incidental to recycling. As used in this subsection, "recycling" means any process whereby material which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product.

K. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the treatment of waste and to establish an expedited approval process. Agricultural operations receiving only yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated; (iii) the total time for the composting process and storage of material that is being composted or has been composted shall not exceed eighteen months prior to its field application or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural operation notifies the Director in writing of his intent to operate a yard waste composting facility and the amount of land available for the receipt of yard waste. In addition to the requirements set forth in clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator in any twelve-month period shall be exempt from permitting requirements provided (i) the owner and operator submit to the Director an annual report describing the volume and types of yard waste received by such operation for composting and (ii) the operator shall certify that the yard waste composting facility complies with local ordinances. The Director shall establish a procedure for the filing of the notices, annual reports and certificates required by this subsection and shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or of conditioning soil shall be sold in accordance with the Virginia Fertilizer Act (§ 3.1-106.1 et seq.). As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in subsection B of § 3.1-22.29.

The operation of a composting facility as provided in this subsection shall not relieve the owner or operator of such a facility from liability for any violation of this chapter.

L. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of

183 vegetative waste. To accomplish this, the Board shall approve an expedited approval process. As used in  
184 this subsection, the decomposition of vegetative waste means a natural aerobic or anaerobic process,  
185 active or passive, which results in the decay and chemical breakdown of the vegetative waste. Nothing  
186 in this subsection shall be construed to prohibit a city or county from exercising its existing authority to  
187 regulate such facilities by requiring, among other things, permits and proof of financial security.

188 M. In receiving and processing applications for permits required by this section, the Director shall  
189 assign top priority to applications which (i) agree to accept nonhazardous recycling residues and (ii)  
190 pledge to charge tipping fees for disposal of nonhazardous recycling residues which do not exceed those  
191 charged for nonhazardous municipal solid waste. Applications meeting these requirements shall be acted  
192 upon no later than six months after they are deemed complete.

193 N. Every solid waste management facility shall be operated in compliance with the regulations  
194 promulgated by the Board pursuant to this chapter. To the extent consistent with federal law, those  
195 facilities which were permitted prior to March 15, 1993, and upon which solid waste has been disposed  
196 of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical  
197 design capacity, provided that the facility is in compliance with the requirements for liners and leachate  
198 control in effect at the time of permit issuance, and further provided that on or before October 9, 1993,  
199 the owner or operator of the solid waste management facility submits to the Director:

200 1. An acknowledgement that the owner or operator is familiar with state and federal law and  
201 regulations pertaining to solid waste management facilities operating after October 9, 1993, including  
202 postclosure care, corrective action and financial responsibility requirements;

203 2. A statement signed by a registered professional engineer that he has reviewed the regulations  
204 established by the Department for solid waste management facilities, including the open dump criteria  
205 contained therein; that he has inspected the facility and examined the monitoring data compiled for the  
206 facility in accordance with applicable regulations; and that, on the basis of his inspection and review, *he*  
207 has concluded *that*: (i) ~~that~~ the facility is not an open dump, (ii) ~~that~~ the facility does not pose a  
208 substantial present or potential hazard to human health and the environment, and (iii) ~~that~~ the leachate or  
209 residues from the facility do not pose a threat of contamination or pollution of the air, surface water or  
210 ground water in a manner constituting an open dump or resulting in a substantial present or potential  
211 hazard to human health or the environment; and

212 3. A statement signed by the owner or operator (i) that the facility complies with applicable financial  
213 assurance regulations, and (ii) estimating when the facility will reach its vertical design capacity.

214 The facility may not be enlarged prematurely to avoid compliance with state or federal regulations  
215 when such enlargement is not consistent with past operating practices, the permit or modified operating  
216 practices to ensure good management.

217 Facilities which are authorized by this subsection to accept waste for disposal beyond the waste  
218 boundaries existing on October 9, 1993, shall be as follows:

219 Category 1: Nonhazardous industrial waste facilities that are located on property owned or controlled  
220 by the generator of the waste disposed of in the facility;

221 Category 2: Nonhazardous industrial waste facilities other than those that are located on property  
222 owned or controlled by the generator of the waste disposed of in the facility, provided that the facility  
223 accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or  
224 other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

225 Category 3: Facilities that accept only construction-demolition-debris waste as defined in the Board's  
226 regulations.

227 The Director may prohibit or restrict the disposal of waste in facilities described in this subsection  
228 which contain hazardous constituents as defined in applicable regulations which, in the opinion of the  
229 Director, would pose a substantial risk to health or the environment. Facilities described in category 3  
230 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that  
231 there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable  
232 performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of  
233 the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

234 Owners or operators of facilities which are authorized under this subsection to accept waste for  
235 disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded  
236 disposal areas maintain setback distances applicable to such facilities under the Board's current  
237 regulations and local ordinances. Prior to the expansion of any facility described in category 2 or 3, the  
238 owner or operator shall provide the Director with written notice of the proposed expansion at least sixty  
239 days prior to commencement of construction. The notice shall include recent groundwater monitoring  
240 data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a  
241 manner constituting an open dump or creating a substantial present or potential hazard to human health  
242 or the environment. The Director shall evaluate the data included with the notification and may advise  
243 the owner or operator of any additional requirements that may be necessary to ensure compliance with  
244 applicable laws and prevent a substantial present or potential hazard to health or the environment.

245 Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in  
246 compliance with regulations promulgated by the Board.

247 Nothing in this subsection shall alter any requirement for groundwater monitoring, financial  
248 responsibility, operator certification, closure, post-closure care, operation, maintenance or corrective  
249 action imposed under state or federal law or regulation, or impair the powers of the Director pursuant to  
250 § 10.1-1409.

251 O. Portions of a permitted solid waste management facility used solely for the storage of household  
252 hazardous waste may store household hazardous waste for a period not to exceed one year, provided that  
253 such wastes are properly contained and are segregated to prevent mixing of incompatible wastes.

254 § 10.1-1408.3. *Caps on levels of disposal.*

255 A. *The amount of municipal solid waste received at any landfill authorized to accept such waste*  
256 *shall not exceed an average of 2,000 tons per day per week, or the documented average actual amount*  
257 *of municipal solid waste received by such landfill on a daily basis during 1998, or, for a landfill in*  
258 *operation for less than two calendar years as of December 31, 1998, the documented average actual*  
259 *amount of municipal solid waste received by such landfill on a quarterly basis during any consecutive*  
260 *ninety-day period during 1998, both as reported to the Department of Environmental Quality pursuant*  
261 *to § 10.1-1413.1, whichever is greater, unless the landfill has received approval from the Board*  
262 *pursuant to subsection B for a larger tonnage allotment. The "average actual amount" shall be*  
263 *calculated by dividing the documented 1998 volume reported pursuant to § 10.1-1413.1 by the number*  
264 *of days the landfill received solid waste in 1998. Municipal solid waste removed from a landfill without*  
265 *adequate liner and leachate collection systems shall be exempt from the provisions of this section.*

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

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

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

274 **2. That the amendments made by this act to § 10.1-1408.1 shall not apply to any application for,**  
275 **or the processing and issuance of, any permit or permit amendment for a solid waste management**  
276 **facility for which such application was submitted to the Department on or before November 13,**  
277 **1998.**