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SENATE BILL NO. 1226

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 8, 1999)

(Patron Prior to Substitute—Senator Marsh)

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 and by adding in Article 7.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1454.2, relating to solid waste management.

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, and by adding in Article 7.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1454.2 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 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 public meeting date. For local governments that have zoning ordinances, such public comment steps as required under §§ ~~15.1-431~~ 15.2-2204 and ~~15.1-493~~ 15.2-2285 shall satisfy the public comment requirements for public hearings and public notice as required under this section. Any applicant which is a local government or public authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is already located shall be exempt from the public comment requirements for public hearing and public notice otherwise required under this section;

C. Notwithstanding any other provision of law:

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

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

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

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

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

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

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

The Director may include in any permit such recordkeeping, testing and reporting requirements as are necessary to ensure that the local governing body of the county, city or town where the waste management facility is located is kept timely informed regarding the general nature and quantity of waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall require disclosure of proprietary information only as is necessary to carry out the purposes of this chapter. At least once every ten years, the Director shall review and issue written findings on the environmental compliance history of each permittee, material changes, if any, in key personnel, and 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) the facility is not an open dump, (ii) the facility does not pose a substantial
208 present or potential hazard to human health and the environment, and (iii) the leachate or residues from
209 the facility do not pose a threat of contamination or pollution of the air, surface water or ground water
210 in a manner constituting an open dump or resulting in a substantial present or potential hazard to human
211 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.

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

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

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

§ 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 an average of 2,000 tons per day, or the documented 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 documented 1998 volume reported pursuant to § 10.1-1413.1 by the number of days the landfill received solid waste in 1998. Municipal solid waste removed from a landfill without adequate liner and leachate collection systems and transferred to a landfill with adequate liner and leachate collection systems shall not be included in the calculation of the allowable average daily tonnage pursuant to this section. However, the removal and transfer shall be conducted pursuant to an arrangement entered into prior to January 1, 1999, to which the locality where the waste will be redeposited is a party. For purposes of determining compliance with this section, daily averages shall be calculated based on disposal over a seven-day period.

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. For any landfill in operation for less than two consecutive years as of December 31, 1998, the documented average actual amount of municipal solid waste received at the landfill on a daily basis shall be based on any consecutive ninety-day period during 1998 but shall not exceed 2,400 ton per day.

D. 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.

§ 10.1-1454.2. Transportation of waste upon waters; prohibitions.

The provisions of § 10.1-1454.1 will not in all circumstances provide sufficient protection of health, safety and welfare or of the Commonwealth's atmosphere, lands, and waters. Therefore, the commercial transport of nonhazardous solid waste (except scrap metal, dredged material and source-separated recyclables) or regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth shall be prohibited on the Rappahannock, James and York Rivers, to the fullest extent consistent with limitations posed by the Constitution of the United States, as is necessary to protect health, safety and welfare and to protect the Commonwealth's atmosphere, lands and waters from pollution, impairment or destruction.

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

3. That the Virginia Department of Transportation, in conjunction with other appropriate agencies, shall conduct an analysis of the impact any prohibition imposed pursuant to § 10.1-1454.2 may have on highway safety due to impacts on truck traffic. The Department shall report its findings to the Governor and the General Assembly by July 1, 2000. If at any time the Department reports that highway safety has decreased due to any prohibition pursuant to § 10.1-1454.2, the prohibition may be lifted by the Commonwealth Transportation Board.