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HOUSE BILL NO. 249

Offered January 12, 2000

A BILL to amend and reenact § 10.1-1410 of the Code of Virginia, relating to financial assurance for abandoned solid waste management facilities.

Patron—Dillard

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1410 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-1410. Financial responsibility for abandoned facilities; penalties.

A. The Board shall promulgate regulations which ensure that if a facility for the disposal or treatment of solid waste is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

B. The regulations ~~may include bonding requirements, the creation of a trust fund to be maintained within the Department, self-insurance, other forms of commercial insurance, or such other mechanism as the Department may deem appropriate~~ shall require that an owner and operator of a solid waste management facility:

1. Ensure the availability of financial resources for the proper operation, closure and post-closure care of the facility by (i) demonstrating that he passes a test for financial viability developed by the Board and (ii) depositing revenue in an interest-bearing escrow account, the solid waste management facility escrow account, to be held and administered by the owner or operator. Proper operation shall include corrective and any other remedial actions required over the life of the facility; and

2. Secure and maintain liability coverage for claims arising from injuries to other parties, including bodily injury or damage to property of others. This coverage shall be in the form of an insurance policy written by an insurer licensed pursuant to Chapter 10 (§38.2-1000 et seq.) of Title 38.2, or other financial instruments as authorized by the Board.

Payments into the solid waste management facility escrow account shall be made by the owner or operator at least annually in an amount to be determined by the Department of Environmental Quality. The owner or operator may accelerate payments into the escrow account or may deposit the full amount of the costs at the time the account is established. The owner or operator may make expenditures from the escrow account and its accumulated interest only for the purposes of facility closure and post-closure care, any corrective action, and third party liability payments so long as such expenditures do not deplete the escrow account to the detriment of eventual closure and post-closure care.

C. Any owner or operator may establish proof of financial assurance in lieu, or in combination with, the requirements of subdivision B 1. Such proof may include surety bonds, certificates of deposit, securities, letters of credit, trust fund agreements or insurance licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2.

D. Regulations governing the amount ~~thereof~~ of financial assurance shall take into consideration the potential for contamination and injury by the solid waste, the cost of disposal of the solid waste and the cost of restoring the facility to a safe condition. Any bonding requirements shall include a provision authorizing the use of personal bonds or other similar surety deemed sufficient to provide the protections specified in subsection A upon a finding by the Director that commercial insurance or surety bond cannot be obtained in the voluntary market due to circumstances beyond the control of the permit holder.

~~C.~~ E. No state governmental agency shall be required to comply with such regulations.

~~D.~~ F. Forfeiture of any financial obligation imposed pursuant to this section shall not relieve any holder of a permit issued pursuant to the provisions of this article of any other legal obligations for the consequences of abandonment of any facility.

~~E.~~ G. Any funds forfeited prior to July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the county, city or town in which the abandoned facility is located. The county, city or town in which the facility is located shall expend forfeited funds as necessary to restore and maintain the facility in a safe condition.

~~F.~~ H. Any funds forfeited on or after July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the Director. The Director shall then expend forfeited funds as necessary solely to restore and maintain the facility in a safe condition. Nothing in this section shall require the Director to expend funds from any other source to carry out the activities contemplated under this subsection.

INTRODUCED

HB249

60 ~~G.I.~~ Any person who knowingly and willfully abandons a solid waste management facility without
61 proper closure or without providing adequate financial assurance instruments for such closure shall, if
62 such failure to close results in a significant harm or an imminent and substantial threat of significant
63 harm to human health or the environment, be liable to the Commonwealth and any political subdivision
64 for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.
65 Any person who knowingly and willfully abandons a solid waste management facility without proper
66 closure or without providing adequate financial assurance instruments for such closure shall, if such
67 failure to close results in a significant harm or an imminent and substantial threat of significant harm to
68 human health or the environment, be guilty of a Class 4 felony.