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**HOUSE BILL NO. 1350**

Offered January 22, 2004

*A BILL to amend and reenact §§ 10.1-1322, 10.1-1402, 10.1-1402.1, as it shall become effective July 1, 2004, and 62.1-44.15:6, as it is currently effective until July 1, 2004, of the Code of Virginia and to amend and reenact the third enactment of Chapter 822 of the Acts of Assembly of 2002 as it applies to § 62.1-44.15:6 of the Code of Virginia, relating to environmental permit fees.*

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Patron—Orrock

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

**1. That §§ 10.1-1322, 10.1-1402, 10.1-1402.1, as it shall become effective July 1, 2004, and 62.1-44.15:6, as it is currently effective until July 1, 2004, of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-1322. Permits.

A. Pursuant to regulations adopted by the Board, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of twenty-five dollars per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. *The Board may also prescribe by regulation permit application fees for new major stationary sources. The permit application fee amounts shall reflect the time required to review applications for permits from new air pollution sources.* The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On January 1, 1993, and December 1 of every even-numbered year thereafter, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Conservation and Natural Resources and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs which may be required by the federal government and administered by the Board, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

INTRODUCED

HB1350

I. [Expired.]

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.

2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.

3. Provide technical assistance and advice concerning all aspects of waste management.

4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.

5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.

6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.

7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.

8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.

9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.

10. Apply for federal funds and transmit such funds to appropriate persons.

11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.

13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.

14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.

15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility, *large quantity generators of hazardous waste*, or any person transporting hazardous waste, ~~permit application~~ fees sufficient to defray only costs related to the issuance of permits *and for inspections necessary to assure compliance* as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the Board pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.

16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste, ~~permit application~~ fees sufficient to defray only costs related to the issuance of permits *for review and assessment of ground water monitoring, and for inspections necessary to assure compliance* as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to ~~issue such permits implement the provisions of this subdivision~~. All such fees received by the Board shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

18. Make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources and the environment from the release or imminent threat of release of waste.

19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.

20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and for investigations to identify parties responsible for such mismanagement.

21. Abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.

22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed radioactive waste.

§ 10.1-1402.1. (Effective July 1, 2004) Permit fee regulations.

Regulations promulgated by the Board which establish a permit fee assessment and collection system pursuant to subdivision 16 of § 10.1-1402 shall be governed by the following:

1. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. *No fees shall be charged for minor modifications or minor amendments to such permits. Annual fees shall reflect the time and complexity of inspecting and monitoring the different categories of facilities. For purposes of this subdivision "minor permit modifications" or "minor amendments" means specific types of changes, defined by the Board, that are made to keep the permit current with routine changes to the facility or its operation and that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.*

2. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

4. Fees collected pursuant to subdivision 16 of § 10.1-1402 shall not supplant or reduce in any way the general fund appropriation to the Board.

5. These permit fees shall be collected in order to recover a portion of the agency's costs associated with (i) the processing of an application to issue, reissue, amend or modify permits, which the Board has authority to issue for the purpose of more efficiently and expeditiously processing permits, (ii) the review and assessment of ground water monitoring, and (iii) inspections necessary to assure compliance with the permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

6. The regulation shall include provisions allowing the Director to waive or reduce fees assessed during a state of emergency or for waste resulting from emergency response actions.

§ 62.1-44.15:6. (Effective until July 1, 2004) Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the Board has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and

collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major	\$24,000
Minor	\$10,500
General	\$ 1,200
2. Virginia Pollution Abatement	
Industrial/Wastewater	\$15,000
Industrial/Sludge	\$ 7,500
Municipal/Wastewater	\$15,000
Municipal/Sludge	\$ 7,500
Other	\$ 750
3. 401 Certification/Virginia Water Protection	
Individual	
wetlands	<del>\$ 9,000</del> \$ 2,2000 per acre of impact
minimum instream	
flow	\$35,000
General	\$ 1,200
4. Ground Water Withdrawal	\$ 6,000
5. Surface Water Withdrawal	\$12,000

*These maximum amounts on permit fees shall be adjusted annually based upon changes in the Consumer Price Index using 2004 as the base year. When modifications in these permits or certificates have been initiated by the Board, the fee for the modified permit or certificate shall not exceed ~~seventy-five~~ 75 percent of the maximum amount established by this subsection. Payments for the costs of processing applications by the Department of Game and Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of ~~twenty-five~~ 25 percent of the fees prescribed by regulation or \$100 per permit or certificate and shall further be limited to those permits or certificates these agencies are required to review by the Code of Virginia.*

*B1. Annual fees charged the permit holder shall reflect the average time and complexity of monitoring compliance with permit conditions in each of the various categories or permits. The Board may adjust the annual fees as needed to implement changes in state or federal mandates, but in no instance shall the revenues exceed actual costs. Effective July 1, 2004, and until amended by the Board, the following amounts shall be collected annually from each facility:*

Type of Permit/Certificate Category	Amount
1. Virginia Pollutant Discharge Elimination System	
Individual Permit	
Major Industrial	\$2,500
Minor Industrial	\$1,000
Major Municipal (less than 2 MGD)	\$800

Major Municipal (2-10 MGD) \$1,200

Major Municipal (greater than 10 MGD) \$1,500

Minor Municipal (less than 10,000 GPD) \$300

Minor Municipal (greater than 10,000 GPD) \$600

2. Virginia Pollution Abatement Individual Permit \$800

C. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Board.

F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits that may be required by the federal government and administered by the Board, or any new permit required pursuant to any law of the Commonwealth.

G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits.

**2. That the third enactment of Chapter 822 of the Acts of Assembly of 2002 are amended and reenacted as follows:**

**3. That the provisions of this act § 10.1-1402.1 shall expire on July 1, 2004.**

**3. That the permit application fee schedules adopted by the State Water Control Board and in effect on January 1, 2004, shall remain in effect until amended by the Board.**

**4. That the regulations adopted by the Virginia Waste Management Board and the State Water Control Board to initially implement the provisions of this act shall be exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia and shall become effective upon filing with the Registrar of Regulations. Thereafter, any amendments to the fee schedule shall not be exempted from Article 2 (§ 2.2-4006 et seq.).**