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SENATE BILL NO. 1088

Senate Amendments in [] — February 2, 2005

A BILL to amend the Code of Virginia by adding in Chapter 11.1 of Title 10.1 an article numbered 1.1, consisting of sections numbered 10.1-1187.1 through [~~10.1-1187.6~~ 10.1-1187.7], relating to the establishment of the Virginia Environmental Excellence Program.

Patrons Prior to Engrossment—Senators Watkins and Whipple

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11.1 of Title 10.1 an article numbered 1.1, consisting of sections numbered 10.1-1187.1 through [~~10.1-1187.6~~ 10.1-1187.7] as follows:

Article 1.1.

Virginia Environmental Excellence Program.

§ 10.1-1187.1. Definitions.

"Board or Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Environmental Management System" means a comprehensive, cohesive set of documented policies and procedures adopted by a facility or person and used to establish environmental goals, to meet and maintain those goals, to evaluate environmental performance and to achieve measurable or noticeable improvements in environmental performance, through planning, documented management and operational practices, operational changes, self assessments, and management review. [The term shall include, but not be limited to, any such system developed in accordance with the International Standards of Operation 14001 standards.]

"E2" means an environmental enterprise.

"E3" means an exemplary environmental enterprise.

"E4" means an extraordinary environmental enterprise.

"Facility" means a manufacturing, business, agricultural, or governmental site or installation involving one or more contiguous buildings or structures under common ownership or management.

"Record of sustained compliance" means that the person or facility (i) has no judgment or conviction entered against it, or against any key personnel of the person or facility or any person with an ownership interest in the facility for a criminal violation of environmental protection laws of the United States, the Commonwealth, or any other state in the previous five years; (ii) has been neither the cause of, nor liable for, more than two significant environmental violations in the previous three years; (iii) has no unresolved notices of violations or potential violations of environmental requirements with the Department or one of the Boards; (iv) is in compliance with the terms of any order or decree, executive compliance agreement, or related enforcement measure issued by the Department, one of the Boards, or the U.S. Environmental Protection Agency; and (v) has not demonstrated in any other way an unwillingness or inability to comply with environmental protection requirements.

§ 10.1-1187.2. Virginia Environmental Excellence Program established.

The Department may establish programs to recognize facilities and persons that have demonstrated a commitment to enhanced environmental performance and to encourage innovations in environmental protection.

§ 10.1-1187.3. Program categories and criteria.

A. The Director shall establish different categories of participation and the criteria and benefits for each category. Such categories shall include, but not be limited to: (i) E2 facilities, (ii) E3 facilities, and (iii) E4 facilities.

B. In order to participate as an E2 facility, a person or facility shall demonstrate that it (i) is developing an environmental management system or has initiated implementation of an environmental management system, (ii) has a commitment to pollution prevention and a plan to reduce environmental impacts from its operations, and (iii) has a record of sustained compliance with environmental requirements. To apply to become an E2 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality, (b) an evaluation of the applicant's environmental impacts, (c) the applicant's objectives and targets for addressing significant environmental impacts, and (d) a description of the applicant's

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59 pollution prevention program. A person or facility may participate in this program for up to three
60 years, and may apply to renew its participation at the expiration of each three-year period. Incentives
61 for E2 facilities may include, but are not limited to, the following: public recognition of facility
62 performance and reduced fees.

63 C. In order to participate as an E3 facility, a person or facility shall demonstrate that it has (i) a
64 fully-implemented environmental management system, (ii) a pollution prevention program with
65 documented results, and (iii) a record of sustained compliance with environmental requirements. To
66 apply to become an E3 facility, an applicant shall submit the following information to the Department:
67 (a) a policy statement outlining the applicant's commitment to improving environmental quality; (b) an
68 evaluation of the applicant's actual and potential environmental impacts; (c) the applicant's objectives
69 and targets for addressing significant environmental impacts; (d) a description of the applicant's
70 pollution prevention program; (e) identification of the applicant's environmental legal requirements; (f)
71 a description of the applicant's environmental management system that identifies roles, responsibilities
72 and authorities, reporting and record-keeping, emergency response procedures, staff training,
73 monitoring, and corrective action processes for non-compliance with the environmental management
74 system; (g) voluntary self-assessments; and (h) procedures for internal and external communications. A
75 person or facility may participate in this program for up to three years, and may apply to renew its
76 participation at the expiration of each three-year period. Incentives for E3 facilities may include, but
77 are not limited to, the following: public recognition of facility performance, reduced fees, reduced
78 inspection priority, a single point-of-contact between the facility and the Department, streamlined
79 environmental reporting, reduced monitoring requirements, prioritized permit and permit amendment
80 review, and the ability to implement alternative compliance measures approved by the appropriate
81 Board in accordance with § 10.1-1187.6. [Any facility or person that has been accepted into the
82 National Performance Track Program by the U.S. Environmental Protection Agency shall be deemed to
83 be an E4 facility. If acceptance in the Program is revoked or suspended by the U.S. Environmental
84 Protection Agency, participation as an E4 facility shall also be terminated or suspended.]

85 D. In order to participate as an E4 facility, a person or facility shall meet the criteria for
86 participation as an E3 facility, and shall have (i) implemented and completed at least one full cycle of
87 an environmental management system as verified by an unrelated third-party qualified to audit
88 environmental management systems and (ii) committed to measures for continuous and sustainable
89 environmental progress and community involvement. To apply to become an E4 facility, an applicant
90 shall submit (a) the information required to apply to become an E3 facility, (b) documentation
91 evidencing implementation and completion of at least one full cycle of an environmental management
92 system and evidencing review and verification by an unrelated third party, and (c) documentation that
93 the applicant has committed to measures for continuous and sustainable environmental progress and
94 community involvement. A person or facility may participate in this program for up to three years, and
95 may apply to renew its participation at the expiration of each three-year period. Incentives for E4
96 facilities may include all of the incentives available to E3 facilities.

97 § 10.1-1187.4. Procedures for participation.

98 A. The Director shall develop guidelines and procedures for implementation of the program,
99 including procedures for submitting applications, guidelines for annual reports from participating
100 persons or facilities, and procedures for reviewing program implementation.

101 B. Upon review of an application, the Director may approve or deny the person's or facility's
102 participation in the appropriate category within the Virginia Environmental Excellence Program. The
103 denial of a person's or facility's participation in the Virginia Environmental Excellence Program shall
104 not be with prejudice or otherwise prevent reapplication by the person or facility. If a participant fails
105 to maintain a record of sustained compliance, fails to resolve an alleged environmental violation within
106 180 days, or fails to meet the requirements or criteria for participation in the Virginia Environmental
107 Excellence Program or any category within the program, the Director may revoke or suspend their
108 participation in the program or revoke participation in a higher level and approve its participation in a
109 lower level of the program. The Director shall provide reasonable notice of the reasons for the
110 suspension or revocation and allow the participant to respond prior to making such a decision.

111 C. The Director's decision to approve, deny, revoke, or suspend a person's or facility's participation
112 in any category of the Virginia Environmental Excellence Program is discretionary, shall not be a case
113 decision as defined in § 2.2-4001, and shall be exempt from judicial review.

114 § 10.1-1187.5. Reporting.

115 A. Participants shall submit annual reports in a format and schedule prescribed by the Director,
116 including information on environmental performance relevant to the program.

117 B. The Department shall submit a report to the Governor and to the members of the House
118 Committee on Agriculture, Chesapeake and Natural Resources and the members of the Senate
119 Committee on Agriculture, Conservation and Natural Resources by December 1 of every even-numbered
120 year, with the last report due on December 1, 2010. The report shall include the information from the

121 participants' reports as well as information on the incentives that have been provided and the
122 innovations that have been developed by the agency and participants.

123 § 10.1-1187.6. Approval of alternate compliance methods.

124 A. To the extent consistent with federal law and notwithstanding any other provision of law, the Air
125 Pollution Control Board, the Waste Management Board, and the State Water Control Board may grant
126 alternative compliance methods to the regulations adopted pursuant to their authorities, respectively,
127 under § 10.1-1308, § 10.1-1402, and § 62.1-44.15 for persons or facilities that have been accepted by
128 the Department as meeting the criteria for E3 and E4 facilities under § 10.1-1187.3 [, including but not
129 limited to changes to monitoring and reporting requirements and schedules, streamlined submission
130 requirements for permit renewals, the ability to make certain operational changes without prior
131 approval, and other changes that would not increase a facility's impact on the environment] . Such
132 alternative compliance methods may allow alternative methods for achieving compliance with prescribed
133 regulatory standards, provided that the person or facility requesting the alternative compliance method
134 demonstrates that the method will (i) meet the purpose of the applicable regulatory standard, (ii)
135 promote achievement of those purposes through increased reliability, efficiency, or cost effectiveness,
136 and (iii) afford environmental protection equal to or greater than that provided by the applicable
137 regulatory standard. No alternative compliance method shall be approved that would alter an ambient
138 air quality standard, ground water protection standard, or water quality standard and no alternative
139 compliance method shall be approved that would increase the pollutants released to the environment,
140 increase impacts to state waters, or otherwise result in a loss of wetland acreage.

141 B. Notwithstanding any other provision of law, an alternate compliance method may be approved
142 under this section after at least 30 days' public notice and opportunity for comment, and a
143 determination that the alternative compliance method meets the requirements of this section.

144 C. Nothing in this section shall be interpreted or applied in a manner inconsistent with the
145 applicable federal law or other requirement necessary for the Commonwealth to obtain or retain federal
146 delegation or approval of any regulatory program. Before approving an alternate compliance method
147 affecting any such program, each Board may obtain the approval of the federal agency responsible for
148 such delegation or approval. Any one of the Boards may withdraw approval of the alternate compliance
149 method at any time if any conditions under which the alternate compliance method was originally
150 approved change, or if the recipient has failed to comply with any of the alternative compliance method
151 requirements.

152 D. Upon approval of the alternative compliance method under this section, the alternative
153 compliance method shall be incorporated into the relevant permits as a minor permit modification with
154 no associated fee. The permits shall also contain any such provisions that shall go into effect in the
155 event that the participant fails to fulfill its obligations under the variance, or is removed from the
156 program for reasons specified by the Director under Subsection B of § 10.1-1187.4.

157 [§ 10.1-1187.7. Governor's Environmental Excellence Awards.

158 The Governor's Environmental Excellence Awards shall be awarded each year to recognize
159 participants in the Virginia Environmental Excellence Program that have demonstrated extraordinary
160 leadership, innovation, and commitment to implementation of pollution prevention practices and other
161 efforts to reduce environmental impacts and improve Virginia's natural environment.]