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HOUSE BILL NO. 690

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia, relating to the storage of sewage sludge.

Patrons—Hogan, Abbitt, Byron and Cline; Senator: Quayle

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-164.5. Land application, marketing and distribution of sewage sludge; regulations; notice requirement; permit.

A. 1. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the State Water Control Board or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge by the State Health Commissioner, under a permit issued pursuant to § 32.1-164.3. Any person who engages in such activity shall be subject to the penalties provided in § 32.1-27. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The State Health Commissioner may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

3. Sewage sludge shall not be stored at an approved field storage site more than three days prior to being land applied as authorized in the permit.

B. The Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation, shall promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing or distribution is properly treated or stabilized; (ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect public health and the environment; and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, will be prevented.

C. Regulations promulgated by the Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits as required by this section;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;

5. Required procedures for land application, marketing and distribution of sewage sludge;

6. Requirements for sampling, analysis, record keeping and reporting in connection with land application, marketing and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 32.1-164.2 and 62.1-44.15:3;

8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land applied, and requirements for approval of nutrient management plans by the Department of Conservation and Recreation prior to permit issuance under specific conditions, including but not limited to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, and sites where the permit

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59 authorizes land application more frequently than once every three years at greater than 50 percent of the
60 annual agronomic rate; and

61 9. Procedures for the prompt investigation and disposition of complaints concerning land application
62 of sewage sludge, including the requirements that (i) holders of permits issued under this section shall
63 report all complaints received by them to the State Department of Health and to the local governing
64 body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints
65 concerning land application of sewage sludge shall notify the Department and the permit holder. The
66 Department shall maintain a searchable electronic database of complaints received during the current and
67 preceding calendar year, which shall include information detailing each complaint and how it was
68 resolved.

69 D. Where, because of site-specific conditions identified during the permit application review process,
70 the Department determines that special requirements are necessary to protect the environment or the
71 health, safety or welfare of persons residing in the vicinity of a proposed land application site, the
72 Department may incorporate in the permit at the time it is issued reasonable special conditions regarding
73 buffering, transportation routes, slope, material source, methods of handling and application and time of
74 day restrictions exceeding those required by the regulations promulgated under this section. Before
75 incorporating any such conditions into the permit, the Department shall provide written notice to the
76 permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the
77 additional requirements. The Department shall incorporate into the notice any written requests or
78 recommendations concerning such site-specific conditions submitted by the local governing body where
79 the land application is to take place. The permit applicant shall have at least 14 days in which to review
80 and respond to the proposed conditions. Should the permit applicant object to the inclusion of any such
81 condition, the approval of the Commissioner shall be required before the condition objected to may be
82 included in the permit.

83 E. The Board may adopt regulations prescribing a reasonable fee not to exceed \$2,500 to be charged
84 for the direct and indirect costs associated with the processing of an application to issue, reissue, amend
85 or modify any permit to land apply, distribute or market sewage sludge pursuant to this section.

86 F. There is hereby established in the treasury a special fund to be known as the Sludge Management
87 Permit Fee Fund, hereinafter referred to as the fund. The fees required by this section shall be
88 transmitted to the Comptroller to be deposited into the fund. The income and principal of the fund shall
89 be used only and exclusively for the direct and indirect costs associated with the processing of an
90 application to issue, reissue, amend or modify any permit to land apply, distribute or market sewage
91 sludge. The State Treasurer shall be the custodian of the moneys deposited in the fund. No part of the
92 fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

93 G. All persons holding or applying for a permit authorizing the land application of sewage sludge
94 shall provide to the Department written evidence of financial responsibility, which shall be available to
95 pay claims for cleanup costs, personal injury and property damages resulting from the transportation,
96 storage or land application of sewage sludge. The Board of Health shall, by regulation, establish and
97 prescribe mechanisms for meeting the financial responsibility requirements of this section.

98 H. The Department, upon the timely request of any individual to test the sewage sludge at a specific
99 site, shall collect samples of the sewage sludge at the site prior to the land application and submit such
100 samples to a certified laboratory. The testing shall include an analysis of the (i) concentration of trace
101 elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a)
102 furnished to the individual requesting that the test be conducted and (b) reviewed by the Department.
103 The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing,
104 and analysis.

105 I. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the
106 permit holder shall deliver or cause to be delivered written notification to the chief executive officer or
107 his designee for the local government where the site is located. The notice shall identify the location of
108 the permitted site and the expected sources of the sewage sludge to be applied to the site. This
109 requirement may be satisfied by providing a list of all available permitted sites in the locality at least
110 100 days prior to commencing the application at any site on the list. This requirement shall not apply to
111 any application commenced prior to October 10, 2005. If the site is located in more than one county,
112 the notice shall be provided to all jurisdictions where the site is located.

113 J. The Board and the Department, in consultation with the Department of Environmental Quality, the
114 Department of Conservation and Recreation, the Department of Agriculture and Consumer Services,
115 Virginia Polytechnic Institute and State University, and the Virginia Agricultural Extension Service, shall
116 establish and implement a program to train persons employed by those local governments that have
117 adopted ordinances, pursuant to § 62.1-44.19:3, to test and monitor the land application of sewage
118 sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia
119 Biosolids Use Regulations; (ii) land application methods and equipment, including methods and
120 processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain

121 of custody control; (iv) preparation and implementation of nutrient management plans for land
 122 application sites; (v) complaint response and preparation of complaint and inspection reports; (vi)
 123 enforcement authority and procedures, (vii) interaction and communication with the public; and (viii)
 124 preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subdivision
 125 H 3 of § 62.1-44.19:3. To the extent feasible, the program shall emphasize in-field instruction and
 126 practical training. The completion of training shall not be a prerequisite to the exercise of authority
 127 granted to local governments by any applicable provision of law.

128 The Department may:

129 1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and
 130 providing facilities and instructors for the program. The fee shall be reimbursable from the fund
 131 established pursuant to § 62.1-44.19:3; and

132 2. Request and accept the assistance and participation of other state agencies and institutions in
 133 preparing and presenting the course of training established by this subsection.

134 K. Surface incorporation into the soil of sewage sludge applied to cropland may be required when
 135 practicable and compatible with a soil conservation plan meeting the standards and specifications of the
 136 U.S. Department of Agriculture Natural Resources Conservation Service.

137 L. The Board shall develop regulations specifying and providing for extended buffers to be employed
 138 for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface
 139 incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards
 140 and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such
 141 extended buffers may be included by the Department as site specific permit conditions pursuant to
 142 subsection D, as an alternative to surface incorporation when necessary to protect odor sensitive
 143 receptors as determined by the Department or the local monitor.

144 § 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without
 145 permit; ordinances; notice requirement; fees.

146 A. 1. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge
 147 from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination
 148 System Permit issued by the Board.

149 2. Sewage sludge shall be treated to meet standards for land application as required by Board
 150 regulation prior to delivery at the land application site. No person shall alter the composition of sewage
 151 sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement
 152 Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration
 153 of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of
 154 Chapter 3.1 of Title 62.1. The addition of lime or deodorants to sewage sludge that has been treated to
 155 meet land application standards shall not constitute alteration of the composition of sewage sludge. The
 156 Board may authorize public institutions of higher education to conduct scientific research on the
 157 composition of sewage sludge that may be applied to land.

158 3. *Sewage sludge shall not be stored at an approved field storage site more than three days prior to*
 159 *being land applied as authorized in the permit.*

160 B. No person shall contract or propose to contract, with the owner of a sewage treatment works, to
 161 land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply,
 162 market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution
 163 Abatement Permit from the Board or a current permit from the State Health Commissioner authorizing
 164 land application, marketing or distribution of sewage sludge and specifying the location or locations, and
 165 the terms and conditions of such land application, marketing or distribution.

166 C. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of
 167 the land application of sewage sludge within its political boundaries to ensure compliance with
 168 applicable laws and regulations.

169 D. The Department, upon the timely request of any individual to test the sewage sludge at a specific
 170 site, shall collect samples of the sewage sludge at the site prior to the land application and submit such
 171 samples to a certified laboratory. The testing shall include an analysis of the (i) concentration of trace
 172 elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a)
 173 furnished to the individual requesting that the test be conducted and (b) reviewed by the Department.
 174 The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing,
 175 and analysis.

176 E. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the
 177 permit holder shall deliver or cause to be delivered written notification to the chief executive officer or
 178 his designee for the local government where the site is located. The notice shall identify the location of
 179 the permitted site and the expected sources of the sewage sludge to be applied to the site. This
 180 requirement may be satisfied by providing a list of all available permitted sites in the locality at least
 181 100 days prior to commencing the application at any site on the list. This requirement shall not apply to

182 any application commenced prior to October 10, 2005. If the site is located in more than one county,
183 the notice shall be provided to all jurisdictions where the site is located.

184 F. Surface incorporation into the soil of sewage sludge applied to cropland may be required when
185 practicable and compatible with a soil conservation plan meeting the standards and specifications of the
186 U.S. Department of Agriculture Natural Resources Conservation Service.

187 G. The Board shall develop regulations specifying and providing for extended buffers to be employed
188 for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface
189 incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards
190 and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such
191 extended buffers may be included by the Department as site specific permit conditions pursuant to
192 subsection D of § 32.1-164.5, as an alternative to surface incorporation when necessary to protect odor
193 sensitive receptors as determined by the Department or the local monitor.

194 H. Not later than January 1, 2003, the Board of Health shall adopt regulations requiring the payment
195 of a fee for the land application of sewage sludge, pursuant to permits issued under subsection B, in
196 counties, cities or towns that have adopted ordinances in accordance with subsection C. The person land
197 applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the
198 sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee
199 to the Department of Health as provided for by regulation. The fee shall not exceed the amount
200 necessary to reimburse the direct costs for a reasonable amount of testing and for the monitoring of the
201 land application of sewage sludge by counties, cities and towns that have adopted such ordinances. The
202 fee shall be imposed on each dry ton of sewage sludge that is land applied in such counties, cities and
203 towns in accordance with the regulations adopted by the Board of Health. The regulations shall include
204 requirements and procedures for:

205 1. Collection of fees by the Department of Health;

206 2. Retention of proceeds in a special nonreverting fund to be administered by the Department of
207 Health; and

208 3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns
209 with duly adopted ordinances providing for the testing and monitoring of the land application of sewage
210 sludge, as provided for in this subsection.