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HOUSE BILL NO. 2801

Offered January 10, 2007

Prefiled January 10, 2007

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

Patrons—Byron, Abbitt, Hogan, Putney, Valentine and Wittman; Senators: Hawkins, Newman and 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. *Beginning July 1, 2007, no application for a (i) Virginia Pollution Abatement Permit or (ii) permit from the Commissioner, which authorizes the land application, marketing or distribution of sewage sludge, shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be land applied that the location of the site of the land application is consistent with all applicable ordinances. In addition to the local testing and monitoring ordinances permitted under subsection C of § 62.1-44.19:3, localities, as part of their zoning ordinances, may designate or reasonably restrict the land application of sewage sludge to specific areas or parcels within the locality based on criteria directly related to the public health, safety, and welfare of its citizens and the environment.*

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.

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

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58 62.1-44.15:3;

59 8. Requirements for site-specific nutrient management plans, which shall be developed by persons
60 certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is
61 land applied, and requirements for approval of nutrient management plans by the Department of
62 Conservation and Recreation prior to permit issuance under specific conditions, including but not limited
63 to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in
64 subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, and sites where the permit
65 authorizes land application more frequently than once every three years at greater than 50 percent of the
66 annual agronomic rate; and

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

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

89 E. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and
90 persons applying for permits and permit modifications pursuant to this section. All fees collected
91 hereunder shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a
92 permit shall be \$5,000. The fee for the reissuance, amendment or modification of a permit for an
93 existing site shall not exceed \$1,000 and shall be charged only for permit actions initiated by the permit
94 holder. Fees collected under this section shall be exempt from statewide indirect costs charged and
95 collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation
96 to the Department.

97 F. There is hereby established in the treasury a special fund to be known as the Sludge Management
98 Fund, hereinafter referred to as the fund. The fees required by this section shall be transmitted to the
99 Comptroller to be deposited into the fund. The income and principal of the fund shall be used only and
100 exclusively for the Department's direct and indirect costs associated with the processing of an application
101 to issue, reissue, amend or modify any permit to land apply, distribute or market sewage sludge, as well
102 as the administration and management of the Department's sewage sludge land application program. The
103 State Treasurer shall be the custodian of the moneys deposited in the fund. No part of the fund, either
104 principal or interest earned thereon, shall revert to the general fund of the state treasury.

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

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

117 I. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the
118 permit holder shall deliver or cause to be delivered written notification to the chief executive officer or
119 his designee for the local government where the site is located. The notice shall identify the location of

the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

J. The Board and the Department, in consultation with the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, Virginia Polytechnic Institute and State University, and the Virginia Agricultural Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to § 62.1-44.19:3, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures, (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subdivision H 3 of § 62.1-44.19:3. To the extent feasible, the program shall emphasize in-field instruction and practical training. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

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

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

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

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

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

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

2. *Beginning July 1, 2007, no application for a (i) Virginia Pollutant Discharge Elimination System Permit, (ii) Virginia Pollution Abatement Permit, or (iii) permit from the State Health Commissioner, which authorizes the land application, marketing or distribution of sewage sludge, shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be land applied that the location of the site of the land application is consistent with all applicable ordinances.*

3. 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 under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1. 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 Board may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

B. 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 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.

C. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations. *In addition to the local testing and monitoring ordinances permitted under this subsection, any county, city or town, as part of their zoning ordinances, may designate or reasonably restrict the land application of sewage sludge to specific areas or parcels within its political boundaries based on criteria directly related to the public health, safety, and welfare of its citizens and the environment.*

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

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

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

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

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

1. Collection of fees by the Department of Health;
2. Retention of proceeds in a special nonreverting fund to be administered by the Department of Health; and
3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge, as provided for in this subsection.