

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 393

An Act to amend and reenact § 10.1-1308 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1308.01, relating to the exemption of qualified fumigation facilities from air regulations.

[H 1625]

Approved March 23, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1308 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1308.01 as follows:

§ 10.1-1308. Regulations.

A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), 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. No such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. Any regulation that prohibits the selling of any consumer product shall not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

C. Any regulation requiring the use of stage 1 vapor recovery equipment at gasoline dispensing facilities may be applicable only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment for the pollutant ozone. For purposes of this section, gasoline dispensing facility means any site where gasoline is dispensed to motor vehicle tanks from storage tanks.

D. No regulation of the Board shall require permits for the construction or operation of qualified fumigation facilities, as defined in § 10.1-1308.01.

§ 10.1-1308.01. Qualified fumigation facilities.

A. For the purposes of this section, a "qualified fumigation facility" means a facility that:

1. Conducts commodity fumigation using any chemical regulated under Section 112(b) of the federal Clean Air Act of foods, products, components, livestock or materials including fumigation subject to regulation by either the U.S. Department of Agriculture or the U.S. Food and Drug Administration, or conducts such fumigation as required by other international, federal, or state regulations or requirements;

2. Is not otherwise exempt under regulations of the Board for toxic air pollutants;

3. Has the potential to emit less than 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants regulated by the Board pursuant to its regulations in Articles 4 (9 VAC 5-60-200 et seq.) and 5 (9 VAC 5-60-300 et seq.) of Chapter 60 (9 VAC 5-60); or is not otherwise subject to regulation under the provisions of the federal Clean Air Act (42 U.S.C. § 7401 et seq.) related to hazardous air pollutants. For determining potential to emit, "facility" means any building, structure, facility or installation that emits or may emit any regulated air pollutant. A facility shall include all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control;

4. Operates in compliance with all federal and state regulations for licensing and operation of fumigation facilities and licensing of fumigant applicators; and

5. Conducts fumigation activities that are, at a minimum, one of the following:

a. Performed in buildings or locations within the facility that are no closer than 300 feet from any building, structure, or area not within the facility if such building, structure, or area is regularly occupied by the public. The conditions in this subdivision may be waived or reduced by the Department, in consultation with the Department of Agriculture and Consumer Services;

b. Performed in buildings or containers that are sealed during fumigation and that voluntarily employ capture and control technologies for the fumigant emissions; or

c. Monitored utilizing equipment and methods recognized by the National Institute for Occupational Safety and Health, or other equipment and methods widely accepted as an industry standard, to ensure the applicable fumigant airborne concentrations referenced in the permissible exposure limits established by the Department of Labor and Industry or the parts per million standard stipulated in the federally approved pesticide labeling, whichever is more stringent, is not exceeded at the fence or property line during active fumigation and fumigation aeration.

B. The operator of a qualified fumigation facility shall provide to the Department, by first-class mail, facsimile, or electronic mail:

1. A written notice prior to conducting fumigation activity at the facility that shall include:

a. Exact physical location at the facility of the particular fumigation operation and distance from any building, structure, or other area regularly occupied by the public;

b. Object being fumigated (e.g. rail car, truck container, warehouse, bin, storage silo, open pallet of product);

c. Product being fumigated;

d. Number of objects and quantity of product being fumigated;

e. Containment system (e.g. tarp, sealed container);

f. Fumigant to be used;

g. Expected quantity of fumigant to be used;

h. Expected duration of fumigation;

i. Expected duration of aeration;

j. Material safety data sheet (MSDS) for fumigant; and

k. A brief description of capture and control device, if used pursuant to subdivision A 5 b.

2. A written report completed within four business days following the completion of the fumigation activity that shall include:

a. Total quantity of fumigant actually used;

b. Actual duration of aeration; and

c. Monitoring results for fumigation operations conducted pursuant to subdivision A 5 c.

C. Prior to the application of fumigant at the site, a facility shall post visible and legible signs at the facility fence or property line closest to any public right-of-way. The signs shall remain in place until completion of the aeration process and shall conform to the format for placards mandated by the federally approved fumigant label.

D. In-transit fumigations where the planned aeration is scheduled to occur outside of the Commonwealth are not subject to Board regulations.

2. That by July 1, 2013, the Department of Environmental Quality, in consultation with the Virginia Department of Agriculture and Consumer Services, shall conduct enhanced air monitoring at fumigation sites and make its findings available to the Department of Health. The Department of Health shall (i) assess air monitoring data; (ii) determine whether health concerns exist at fumigation sites; and (iii) make recommendations, if necessary, to the fumigation services industry through appropriate trade groups and the Department of Environmental Quality as to whether additional preventative measures are needed to protect public health.