

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 505

An Act to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5, relating to authorizing the Department of Conservation and Recreation to establish supplemental environmental projects.

[H 2368]

Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5 as follows:

§ 10.1-104.5. Supplemental environmental projects.

A. As used in this section:

"Supplemental environmental project" means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

B. The Virginia Soil and Water Conservation Board or the Director acting on behalf of the Board or under his own authority in issuing any administrative order, or any court of competent jurisdiction as provided for under this Code, may, in its or his discretion and with the consent of the person subject to the order, provide for such person to undertake one or more supplemental environmental projects. The project shall have a reasonable geographic nexus to the violation or, if no such project is available, shall advance at least one of the declared objectives of the environmental law or regulation that is the basis of the enforcement action. Performance of such projects shall be enforceable in the same manner as any other provision of the order.

C. The following categories of projects may qualify as supplemental environmental projects, provided the project otherwise meets the requirements of this section: public health, pollution prevention, pollution reduction, environmental restoration and protection, environmental compliance promotion, and emergency planning and preparedness. In determining the appropriateness and value of a supplemental environmental project, the following factors shall be considered by the enforcement authority: net project costs, benefits to the public or the environment, innovation, impact on minority or low income populations, multimedia impact, and pollution prevention. The costs of those portions of a supplemental environmental project that are funded by state or federal low-interest loans, contracts or grants shall be deducted from the net project cost in evaluating the project. In each case in which a supplemental environmental project is included as part of a settlement, an explanation of the project with any appropriate supporting documentation shall be included as part of the case file.

D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

E. Any decision whether or not to agree to a supplemental environmental project is within the sole discretion of the Virginia Soil and Water Conservation Board, Director, or court and shall not be subject to appeal.

F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable federal law or any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.