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## SENATE BILL NO. 1119

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources  
on February 18, 2011)

(Patron Prior to Substitute—Senator McEachin)

A BILL to amend and reenact §§ 10.1-1182 and 10.1-1186 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1186.6, relating to the Department of Environmental Quality; permit compliance; civil penalty procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1182 and 10.1-1186 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1186.6 as follows:

§ 10.1-1182. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Department" means the Department of Environmental Quality.

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

"Environment" means the natural, scenic and historic attributes of the Commonwealth.

"Special order" means an administrative order issued to any party that has a stated duration of not more than ~~twelve~~ 12 months and that may include a civil penalty of not more than \$10,000 for an initial violation, \$15,000 for a second violation of the same provision, or \$30,000 for a third or subsequent violation of the same provision.

§ 10.1-1186. General powers of the Department.

The Department shall have the following general powers, any of which the Director may delegate as appropriate:

1. Employ such personnel as may be required to carry out the duties of the Department;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, other state agencies and governmental subdivisions of the Commonwealth;

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable;

4. Accept and administer services, property, gifts and other funds donated to the Department;

5. Implement all regulations as may be adopted by the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;

6. Administer, under the direction of the Boards, funds appropriated to it for environmental programs and make contracts related thereto;

7. Initiate and supervise programs designed to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solutions, population and its relation to environmental problems, and other matters concerning environmental quality;

8. Advise and coordinate the responses of state agencies to notices of proceedings by the State Water Control Board to consider certifications of hydropower projects under 33 U.S.C. § 1341;

9. Advise interested agencies of the Commonwealth of pending proceedings when the Department of Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory Commission proceeding or when the Department of Game and Inland Fisheries intervenes in a Federal Energy Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the proceedings;

10. Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the provisions of any law administered by the Boards, the Director or the Department, (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as defined in § 2.2-4001, of the Boards or Director. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in conjunction with issuance of special orders. For purposes of this subdivision, "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;

11. Notwithstanding any other provision of law and to the extent consistent with federal requirements and pursuant to § 10.1-1186.6, issue civil penalties of no more than \$10,000 to any person for failing to comply with (i) the provisions of any law administered by the Boards, the Director, or the Department, (ii) any condition of a permit or a certification, (iii) any regulation of the Boards, or (iv) any case

60 decision, as defined in § 2.2-4001, of the Boards or Director. For purposes of this subdivision, "Boards"  
61 means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste  
62 Management Board; and

63 ~~11~~12. Perform all acts necessary or convenient to carry out the purposes of this chapter.

64 § 10.1-1186.6. Civil penalty procedures; notice; review.

65 A. Notwithstanding any other provision of law and to the extent consistent with federal requirements,  
66 the Department may issue a civil penalty in an amount no more than \$10,000 to any person to comply  
67 with (i) the provisions of any law administered by the Boards, the Director, or the Department, (ii) any  
68 condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as  
69 defined in § 2.2-4001, of the Boards or Director. For purposes of this section, "Boards" means the State  
70 Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management  
71 Board.

72 B. The Department shall provide reasonable notice of the civil penalty in writing, either by certified  
73 mail with return receipt requested or by personal service, to the person incurring the penalty describing  
74 the violation with reasonable particularity. The issuance of a civil penalty shall be considered a case  
75 decision, as defined in § 2.2-4001.

76 C. The person to whom the notice is addressed shall have 20 days from the date of service of the  
77 notice provided for in subsection B in which to make written application for an informal fact finding  
78 proceeding pursuant to § 2.2-4019, unless the agency provides for a longer period of time in which  
79 application for a hearing may be made. If no application for a hearing is made within the time allowed,  
80 the agency may make a final order imposing the penalty.

81 D. When an order assessing a civil penalty under this section becomes final by operation of law or  
82 on appeal, and the amount of penalty is not paid within 30 days after the order becomes final, the  
83 Department may transmit a true copy of the order assessing such penalty to the clerk of the circuit  
84 court of any county or city wherein it is ascertained that the person owing such penalty has any estate,  
85 and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be  
86 recorded, and shall index it in the name of the Commonwealth as well as in the name of the person  
87 owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the  
88 property within such locality of the person owing the civil penalty in the amount of the civil penalty.  
89 The Department may collect civil penalties that are owed in the same manner as provided by law in  
90 respect to a judgment of a circuit court.

91 **2. That the Department of Environmental Quality shall develop guidance to improve**  
92 **communication and coordination between the Department of Environmental Quality and local**  
93 **governments regarding landfills, other than captive industrial landfills, including the issuance of**  
94 **permits to such facilities.**