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SENATE BILL NO. 1365

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact §§ 10.1-1400 and 15.2-931 of the Code of Virginia, relating to local regulation of materials recovery facilities.*

Patron—Lewis

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That §§ 10.1-1400 and 15.2-931 of the Code of Virginia are amended and reenacted as follows:****§ 10.1-1400. Definitions.**

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

"Advanced recycling" means a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, liquid fuels, waxes, lubricants, or other products through processes that include pyrolysis, gasification, depolymerization, reforming, hydrogenation, solvolysis, catalytic cracking, and similar processes. "Advanced recycling" produces recycled products, including monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels, coatings, waxes, lubricants, and other basic hydrocarbons.

"Advanced recycling facility" means a facility that, using advanced recycling, receives, stores, and converts post-use polymers and recovered feedstocks that it receives. An "advanced recycling facility" shall be subject to all applicable federal and state environmental laws and regulations.

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Board" means the Virginia Waste Management Board.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Department" means the Department of Environmental Quality.

"Depolymerization" means a manufacturing process in which post-use polymers are broken into smaller molecules, including monomers and oligomers; raw, intermediate, or final products; plastics and chemical feedstocks; basic and unfinished chemicals; crude oil; naphtha; liquid transportation fuels; waxes; lubricants; coatings; and other products.

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

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the Director, which includes:

1. The full name and business address of all key personnel;

2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal, or local authority, within the past 10 years, that are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation, or requirement relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act (§ 54.1-3400 et seq.); racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth that have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years, in

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59 connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or
60 hazardous waste;

61 7. Any other information about the applicant and the key personnel that the Director may require that
62 reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and
63 competently operate a solid waste management facility in Virginia; and

64 8. The full name and business address of any member of the local governing body or planning
65 commission in which the solid waste management facility is located or proposed to be located, who
66 holds an equity interest in the facility.

67 "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid
68 waste into or on any land or water so that such solid waste or any constituent thereof may enter the
69 environment or be emitted into the air or discharged into any waters, including ground waters.

70 "Equity" includes both legal and equitable interests.

71 "Federal acts" means any act of Congress providing for waste management and regulations
72 promulgated thereunder.

73 "Gasification" means a manufacturing process through which recovered feedstocks are heated and
74 converted in an oxygen-deficient atmosphere into a fuel and gas mixture that is then converted to crude
75 oil, diesel fuel, gasoline, home heating oil, ethanol, transportation fuel, other fuels, chemicals, waxes,
76 lubricants, chemical feedstocks, diesel and gasoline blendstocks, or other valuable raw, intermediate, or
77 final products that are returned to economic utility in the form of raw materials, products, or fuels.

78 "Hazardous material" means a substance or material in a form or quantity that may pose an
79 unreasonable risk to health, safety, or property when transported, and which the U.S. Secretary of
80 Transportation has so designated by regulation or order.

81 "Hazardous substance" means a substance listed under the federal Comprehensive Environmental
82 Response Compensation and Liability Act, P.L. 96-510.

83 "Hazardous waste" means a solid waste or combination of solid waste that because of its quantity,
84 concentration or physical, chemical, or infectious characteristics may:

85 1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible
86 or incapacitating illness; or

87 2. Pose a substantial present or potential hazard to human health or the environment when
88 improperly treated, stored, transported, disposed of, or otherwise managed.

89 "Hazardous waste generation" means the act or process of producing hazardous waste.

90 "Household hazardous waste" means any waste material derived from households (including single
91 and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic
92 grounds, and day-use recreation areas) which, except for the fact that it is derived from a household,
93 would be classified as a hazardous waste, including nickel, cadmium, mercuric oxide, manganese,
94 zinc-carbon or lead batteries; solvent-based paint, paint thinner, paint strippers, or other paint solvents;
95 any product containing trichloroethylene, toxic art supplies, used motor oil and unusable gasoline or
96 kerosene, fluorescent or high intensity light bulbs, ammunition, fireworks, banned pesticides, or
97 restricted-use pesticides as defined in § 3.2-3900. All empty household product containers and any
98 household products in legal distribution, storage, or use shall not be considered household hazardous
99 waste.

100 "Key personnel" means the applicant itself and any person employed by the applicant in a managerial
101 capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous
102 waste operations of the applicant in Virginia, but does not include employees exclusively engaged in the
103 physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous
104 waste and such other employees as the Director may designate by regulation. If the applicant has not
105 previously conducted solid waste or hazardous waste operations in Virginia, "key personnel" also
106 includes any officer, director, or partner of the applicant, or any holder of five percent or more of the
107 equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the
108 applicant or of any key personnel is not a natural person, "key personnel" includes all key personnel of
109 that entity, provided that where such entity is a chartered lending institution or a reporting company
110 under the Federal Securities Exchange Act of 1934, "key personnel" does not include key personnel of
111 such entity. Provided further that "key personnel" means the chief executive officer of any agency of the
112 United States or of any agency or political subdivision of the Commonwealth and all key personnel of
113 any person, other than a natural person, that operates a landfill or other facility for the disposal,
114 treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental
115 entities.

116 "Manifest" means the form used for identifying the quantity, composition, origin, routing, and
117 destination of hazardous waste during its transportation from the point of generation to the point of
118 disposal, treatment, or storage of such hazardous waste.

119 "Materials recovery facility" means a facility that separates and prepares recycling materials to be
120 sold to a buyer.

"Mixed radioactive waste" means radioactive waste that contains a substance that renders the mixture a hazardous waste.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

"Person" includes an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.

"Post-use polymer" means a plastic polymer that:

1. Is derived from any industrial, commercial, agricultural, or domestic activity.
2. Is processed at an advanced recycling facility or held at such facility prior to processing.
3. Is used or intended for use as a feedstock to manufacture crude oil, fuels, feedstocks, blendstocks, raw materials, or other intermediate products or final products, using advanced recycling.

4. Is not mixed with solid waste or hazardous waste on site or during processing at the advanced recycling facility at which it is processed.

5. Has been sorted from solid waste and other regulated waste but may contain residual amounts of (i) solid wastes, such as organic material, and (ii) incidental contaminants or impurities, such as paper labels or metal rings.

"Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed and are then cooled, condensed, and converted to crude oil, diesel fuel, gasoline, home heating oil, ethanol, transportation fuel, other fuels, chemicals, waxes, lubricants, chemical feedstocks, diesel and gasoline blendstocks, or other valuable raw, intermediate, or final products that are returned to economic utility in the form of raw materials, products, or fuels.

"Radioactive waste" or "nuclear waste" includes:

1. "Low-level radioactive waste" material that:
a. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in § 11(e)(2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(e)(2)); and

b. The Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste; or

2. "High-level radioactive waste," which means:

a. The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

b. Other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation.

"Recovered feedstock" means one or more of the following materials that has been processed so that it can be used as feedstock in an advanced recycling facility:

1. Post-use polymers.

2. Materials for which the U.S. Environmental Protection Agency has made a nonwaste determination under 40 C.F.R. § 241.3(c) or has otherwise determined are feedstocks and not solid waste.

"Recovered feedstock" does not include unprocessed municipal solid waste and is not mixed with solid waste or hazardous waste on site or during processing at an advanced recycling facility.

"Recycling residue" means the (i) nonmetallic substances, including plastic, rubber, and insulation, that remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics, and paper that are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

"Resource recovery" means the recovery of material or energy from solid waste.

"Resource recovery system" means a solid waste management system that provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

"Sanitary landfill" means a disposal facility for solid waste so located, designed, and operated that it does not pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water, or ground water.

"Sludge" means any solid, semisolid, or liquid wastes with similar characteristics and effects generated from a public, municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, air pollution control facility, or any other waste-producing facility.

"Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining, and agricultural operations, or community activities, but does not include (i) solid or dissolved material in domestic

182 sewage; (ii) solid or dissolved material in irrigation return flows or in industrial discharges that are
183 sources subject to a permit from the State Water Control Board; (iii) source, special nuclear, or
184 by-product material as defined by the Federal Atomic Energy Act of 1954, as amended; or (iv) post-use
185 polymers or recovered feedstocks that are (a) processed at an advanced recycling facility or (b) held at
186 or held for the purpose of conversion at such advanced recycling facility prior to conversion.

187 "Solid waste management facility" means a site used for planned treating, long-term storage, or
188 disposing of solid waste. A "solid waste management facility" may consist of several treatment, storage,
189 or disposal units.

190 "Solvolysis" means a manufacturing process through which post-use polymers are purified with the
191 aid of solvents, allowing additives and contaminants to be removed. The products of solvolysis are
192 polymers capable of being recycled or reused without first being reverted to a monomer. "Solvolysis"
193 includes hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

194 "Transport" or "transportation" means any movement of property and any packing, loading, or
195 unloading or storage incidental thereto.

196 "Treatment" means any method, technique, or process, including incineration or neutralization,
197 designed to change the physical, chemical, or biological character or composition of any waste to
198 neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or
199 storage, or reduced in volume.

200 "Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing
201 activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub
202 and tree prunings, bark, limbs, roots, and stumps.

203 "Waste" means any solid, hazardous, or radioactive waste as defined in this section.

204 "Waste management" means the collection, source separation, storage, transportation, transfer,
205 processing, treatment, and disposal of waste or resource recovery. "Waste management" does not include
206 pyrolysis, gasification, depolymerization, solvolysis, or any other advanced recycling process if the
207 source materials used in such process are composed of post-use polymers or recovered feedstocks.

208 "Yard waste" means decomposable waste materials generated by yard and lawn care and includes
209 leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. "Yard waste" does not
210 include roots or stumps that exceed six inches in diameter.

211 **§ 15.2-931. Regulation of garbage and refuse pickup and disposal services; contracting for such**
212 **services in certain localities.**

213 A. Localities may adopt ordinances requiring the delivery of all or any portion of the garbage, trash
214 or refuse generated or disposed of within such localities to waste disposal facilities located therein, or to
215 waste disposal facilities located outside of such localities if the localities have contracted for capacity at
216 or service from such facilities.

217 Such ordinances may not be adopted until the local governing body, following one or more public
218 hearings, has made the following findings:

219 1. That other waste disposal facilities, including privately owned facilities and regional facilities, are:
220 (i) unavailable; (ii) inadequate; (iii) unreliable; or (iv) not economically feasible, to meet the current and
221 anticipated needs of the locality for waste disposal capacity; and

222 2. That the ordinance is necessary to ensure the availability of adequate financing for the
223 construction, expansion or closing of the locality's facilities, and the costs incidental or related thereto.

224 No ordinance adopted by a locality under this subsection shall prevent or prohibit the disposal of
225 garbage, trash, or refuse at any facility: (i) ~~which~~ *that* has been issued a solid waste management facility
226 permit by an agency of the Commonwealth on or before July 1, 1991; ~~or~~ (ii) for which a Part A permit
227 application for a new solid waste management facility permit, including local governing body
228 certification, was submitted to the Department of Waste Management in accordance with § 10.1-1408.1
229 B on or before December 31, 1991; *or (iii) that is a materials recovery facility as defined in*
230 *§ 10.1-1400.*

231 B. Localities may provide in any ordinance adopted under this section that it is unlawful for any
232 person to dispose of his garbage, trash and refuse in or at any other place. No such ordinance making it
233 unlawful to dispose of garbage, trash and refuse in any other place shall apply to the occupants of
234 single-family residences or family farms disposing of their own garbage, trash or refuse if such
235 occupants have paid the fees, rates and charges of other single-family residences and family farms in the
236 same service area.

237 No ordinance adopted under this section shall apply to garbage, trash and refuse generated, purchased
238 or utilized by an entity engaged in the business of manufacturing, mining, processing, refining or
239 conversion except for an entity engaged in the production of energy or refuse-derived fuels for sale to a
240 person other than any entity controlling, controlled by or under the same control as the manufacturer,
241 miner, processor, refiner or converter. Nor shall such ordinance apply to (i) recyclable materials, which
242 are those materials that have been source-separated by any person or materials that have been separated
243 from garbage, trash and refuse by any person for utilization in both cases as a raw material to be

manufactured into a product other than fuel or energy, (ii) construction debris to be disposed of in a landfill, or (iii) waste oil. Such ordinances may provide penalties, fines and other punishment for violations.

Such localities are authorized to contract with any person, whether profit or nonprofit, for garbage and refuse pickup and disposal services in their respective localities and to enter into contracts relating to waste disposal facilities which recover energy or materials from garbage, trash and refuse. Such contracts may make provision for, among other things, (i) the purchase by the localities of all or a portion of the disposal capacity of a waste disposal facility located within or outside the localities for their present or future waste disposal requirements, (ii) the operation of such facility by the localities, (iii) the delivery by or on behalf of the contracting localities of specified quantities of garbage, trash and refuse, whether or not such counties, cities, and towns collect such garbage, trash and refuse, and the making of payments in respect of such quantities of garbage, trash and refuse, whether or not such garbage, trash and refuse are delivered, including payments in respect of revenues lost if garbage, trash and refuse are not delivered, (iv) adjustments to payments made by the localities in respect of inflation, changes in energy prices or residue disposal costs, taxes imposed upon the facility owner or operator, or other events beyond the control of the facility operator or owners, (v) the fixing and collection of fees, rates or charges for use of the disposal facility and for any product or service resulting from operation of the facility, and (vi) such other provision as is necessary for the safe and effective construction, maintenance or operation of such facility, whether or not such provision displaces competition in any market. Any such contract shall not be deemed to be a debt or gift of the localities within the meaning of any law, charter provision or debt limitation. Nothing in the foregoing powers granted such localities includes the authority to pledge the full faith and credit of such localities in violation of Article X, Section 10 of the Constitution of Virginia.

It has been and is continuing to be the policy of the Commonwealth to authorize each locality to displace or limit competition in the area of garbage, trash or refuse collection services and garbage, trash or refuse disposal services to provide for the health and safety of its citizens, to control disease, to prevent blight and other environmental degradation, to promote the generation of energy and the recovery of useful resources from garbage, trash and refuse, to protect limited natural resources for the benefit of its citizens, to limit noxious odors and unsightly garbage, trash and refuse and decay and to promote the general health and welfare by providing for adequate garbage, trash and refuse collection services and garbage, trash and refuse disposal services. Accordingly, governing bodies are directed and authorized to exercise all powers regarding garbage, trash and refuse collection and garbage, trash and refuse disposal notwithstanding any anti-competitive effect.

C. The following localities may by ordinance require the delivery of all or any portion of the garbage, trash and refuse generated or disposed of within such localities to waste disposal facilities located therein or to waste disposal facilities located outside of such localities if the localities have contracted for capacity at or service from such facilities: (i) Arlington County or the City of Alexandria, singly or jointly, two or all of such counties and cities; (ii) Fairfax County, Fauquier County, Loudoun County, Prince William County, or Stafford County and any town situated within or city wholly surrounded by any of such counties, singly or jointly, two or more of such localities, that have by resolution of the governing body committed the locality to own or operate a resource recovery waste disposal facility; and (iii) localities which are members of the Richmond Regional Planning District No. 15 or Crater Planning District No. 19, singly or jointly, two or more of such localities, that by ordinance of the governing body after a minimum of two public hearings, and after complying with applicable provisions of the Public Procurement Act (Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2), have committed the locality to own, operate or contract for the operation of a resource recovery waste disposal facility.