

# 1999 SESSION

## LEGISLATION NOT PREPARED BY DLS INTRODUCED

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### SENATE BILL NO. 1182

Offered January 21, 1999

A *BILL to amend and reenact § 10.1-1402.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 10.1-1408.3 and 10.1-1408.4, by adding in Article 7.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1454.2, and by adding in Chapter 14 of Title 10.1 an article numbered 7.2, consisting of sections numbered 10.1-1454.3 through 10.1-1454.9, relating to regulation and management of solid waste; penalty.*

Patron—Walker

Referred to Committee on Agriculture, Conservation and Natural Resources

#### Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1402.2 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 10.1-1408.3 and 10.1-1408.4, by adding in Article 7.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1454.2, and by adding in Chapter 14 of Title 10.1 an article numbered 7.2, consisting of sections numbered 10.1-1454.3 through 10.1-1454.9 as follows:

§ 10.1-1402.2. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Waste Management Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.1-180, all moneys collected pursuant to subdivision 16 of § 10.1-1402 shall be paid into the state treasury to the credit of the Fund *as shall all penalties and fees collected pursuant to Article 7.2 (§ 10.1-1454.3 et seq.) of this chapter.*

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Board is authorized and empowered to release moneys from the Fund *except those from penalties and fees collected pursuant to Article 7.2 of this chapter*, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under subdivision 16 of § 10.1-1402 under the direction of the Director. *The Board is authorized and empowered to release moneys from the Fund comprised of penalties and fees collected pursuant to Article 7.2 of this chapter, on warrants issued by the State Comptroller, for the purposes of implementing the provisions of Article 7.2 of this chapter.*

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

§ 10.1-1408.3. *Caps on levels of disposal.*

A. *The amount of municipal solid waste received at any landfill authorized to accept such waste shall not exceed 2,000 tons per day, or the average actual amount of municipal solid waste received by such landfill on a daily basis during 1998, as reported to the Department of Environmental Quality pursuant to § 10.1-1413.1, whichever is greater, unless the landfill has received approval from the Board pursuant to subsection B for a larger tonnage allotment. The average actual amount shall be calculated by dividing the 1998 volume reported pursuant to § 10.1-1413.1 by the number of days the landfill received solid waste in 1998.*

B. *In considering requests for increased tonnage allotments, the Board shall consider those factors set forth in subsection D of § 10.1-1408.1 and other factors it deems appropriate to protect the health, safety and welfare of the people of Virginia and Virginia's environmental and natural resources.*

*No request for an increased tonnage allotment shall be approved by the Board until a public hearing on the proposed increase has been held in the locality where the landfill requesting the increase is located.*

C. *The provisions of this section shall not be construed as allowing activities related to waste disposal that exceed those that may be found in state or local permits, regulations, ordinances, agreements, contracts or other instruments related to particular facilities or localities.*

§ 10.1-1408.4. *Caps on capacity.*

*Notwithstanding any other provision of law, the Director shall not issue any permit for a new landfill designated to receive municipal solid waste until there exists within the Commonwealth less than an eight-year supply of municipal solid waste disposal capacity. Disposal capacity shall be estimated by the Department based on permitted landfill capacity, waste to energy facility capacity, recycling rates, disposal rates and such other factors as the Department deems appropriate.*

§ 10.1-1454.2. *Transportation of waste upon waters; prohibitions.*

*The provisions of § 10.1-1454.1 will not in all circumstances provide sufficient protection of health,*

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safety and welfare or of the Commonwealth's atmosphere, lands, and waters. Therefore, the commercial transport of nonhazardous solid waste (except scrap metal, dredged material and source-separated recyclables) or regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth shall be prohibited by the Board, to the fullest extent consistent with limitations posed by the Constitution of the United States, as is necessary to protect health, safety and welfare and to protect the Commonwealth's atmosphere, lands and waters from pollution, impairment or destruction.

Article 7.2.

Solid Waste Transport by Truck.

§ 10.1-1454.3. Definition.

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

"Transporter" means the owner of any vehicle subject to the provisions of this article.

§ 10.1-1454.4. Authorization required for solid waste transport by truck.

No person shall transport solid waste to any landfill or resource recovery facility permitted to accept municipal solid waste on a vehicle that exceeds 56,000 pounds gross vehicle weight, including both tractor and trailer if transported in such an arrangement, unless the transporter has obtained written authorization from the Director pursuant to this article. Written authorization shall be valid for a period of one year.

§ 10.1-1454.5. Applications; written authorization; fees.

A. The initial application for written authorization to transport solid wastes regulated by this article (the "written authorization") submitted by the transporter, in such manner as the Director may require, shall be accompanied by a one-time application fee of \$1,000 per vehicle.

B. The initial application and each annual submission to the Department for renewal shall be accompanied by a fee based on the number of vehicles and gross vehicle weight of each vehicle owned by the transporter and that are subject to this article, as follows:

1. Vehicles licensed for 56,000 to 64,000 pounds gross vehicle weight, \$1,500 per vehicle.

2. Vehicles licensed for 64,001 to 73,280 pounds gross vehicle weight, \$2,500 per vehicle.

3. Vehicles licensed for more than 73,281 pounds gross vehicle weight, \$5,000 per vehicle.

C. The Department shall provide the transporter with two stickers for each vehicle indicating the transporter's authorization number and authorization expiration date. The stickers shall be displayed prominently on the left front bulkhead and back of the vehicle used to transport waste. Each vehicle shall carry a copy of the written authorization issued by the Director to the transporter.

D. The written authorization may contain such conditions as the Director deems necessary to protect health, safety and welfare and the environment.

E. The fee established in subsection B shall be paid to the Department by July 1 of each year, at which time the authorization shall be renewed in writing and updated stickers will be issued. Fees, other than the initial application fee, may be prorated during the first application year if the application is received after July 1.

§ 10.1-1454.6. Bonding requirement.

Written authorization shall not be issued unless the applicant has filed with the Department a collateral bond in a form prescribed and furnished by the Board. The Department may waive the bonding requirement for localities which are transporters upon written request from the municipality, provided the locality provides some other form of financial responsibility acceptable to the Board. The bond shall be payable to the Commonwealth and conditioned upon compliance by the transporter with every requirement of this chapter and terms and conditions of the written authorization. The amount of the bond shall be in an amount determined by the Board and shall be based upon the number of vehicles for which authorization is sought, but shall be in an amount no less than \$10,000. The Board may require additional bond amounts if it determines additional amounts are necessary to guarantee compliance. The transporter may elect to deposit cash or automatically renewable irrevocable letters of credit which are terminable only upon ninety days' written notice to the Director, or negotiable bonds of the United States Government or the Commonwealth. No corporate surety bond is authorized by this section. The cash amount of such deposit, irrevocable letters of credit or market value of the securities shall be at least equal to the sum of the bond requirement. The Director shall, upon receipt of any deposit of cash or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which the deposit is made. The State Treasurer shall, at all times, be responsible for the custody and safekeeping of deposits. The transporter making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the Director, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes specified under this section having a market value at least equal to the sum of the bond requirement, and to demand, receive and recover the interest and income from the negotiable bonds as the same becomes due and payable. However, where negotiable bonds, deposited as provided, mature or are called, the State Treasurer, at the request of the transporter, shall convert the negotiable bonds into

other negotiable bonds of the classes specified under this section as may be designated by the transporter. Further, where notice of intent to terminate a letter of credit is given, the Department shall, after thirty days' written notice to the transporter and in the absence of a replacement of the letter of credit within the thirty-day period by the transporter with other acceptable guarantees provided under this section, draw upon and convert the letter of credit into cash, to be held by the State Treasurer as a collateral bond guarantee. Liability under the bond shall be for the duration of the written authorization and for period of one year after the expiration of the written authorization.

§ 10.1-1454.7. Manifest system.

No person shall transport, on vehicles requiring written authorization, municipal solid waste to any landfill or resource recovery facility in the Commonwealth without a manifest, in a form prepared by the Department, to assure that the waste is suitable for disposal at the facility. No such facility shall allow waste to be disposed of in its facility without a manifest showing that the waste is proper for disposal in the facility.

§ 10.1-1454.8. Compliance and enforcement.

A. The Board may deny, suspend, modify or revoke any written authorization if it finds that the transporter or its agent has failed or continues to fail to comply with, or has shown a lack of ability or intention to comply with, any provision of this chapter, any provision of any federal or state statute relating to environmental protection or to the protection of the public health, safety and welfare, any rule, regulation or order of the Board, any condition of any permit, license or other written authorization issued by the Board.

B. In the case of a corporate transporter, the Director may deny the issuance of a written authorization if he finds that a principal of the corporation was a principal of another corporation which committed past violations of this chapter.

C. Any person who has violated any provision or requirement of this chapter shall be denied a written authorization under this article unless the application for written authorization demonstrates to the satisfaction of the Director that the violation has been corrected.

D. Independent contractors and agents who are to operate under the written authorization shall be subject to this section. Independent contractors, agents and the transporter shall be jointly and severally liable, without regard to fault, for violations of this article which occur during the contractor's or agent's involvement in the course of operations.

E. A written authorization issued under this article shall be revocable or subject to modification or suspension at any time the Board determines that the solid waste transportation:

1. Is or has been conducted in violation of this chapter.
2. Is creating a public nuisance.
3. Is creating a potential hazard to the public health, safety and welfare or the environment.
4. Was conducted pursuant to an authorization that was not granted in accordance with law.

F. The Board may issue administrative orders as it deems necessary to aid in the enforcement of this article. Such orders may include, but shall not be limited to, orders modifying, suspending or revoking written authorizations and orders requiring persons to cease activities or operations of a solid waste facility or transportation vehicle which in the course of its operation is in violation of any provision of this chapter, any rule or regulation of the Board or any terms and conditions of a written authorization issued under this article or other permit issued under this chapter. An order issued under this section shall take effect upon notice, unless the order specifies otherwise. The Board shall within ten days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the administrative order. It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section. Failure to proceed diligently and failure to comply with the order within the time, if any, as may be specified, shall be a violation of this chapter.

The power of the Board to issue an order under this subsection is in addition to any other remedy which may be afforded to the Board pursuant to this chapter.

G. Without limiting any other remedy available under this chapter, the Board may, for any violation of this article, any rule or regulation of the Board or order of the Board or any term or condition of any written authorization issued by the Director, assess a civil penalty upon a person for the violation. The penalty may be assessed whether or not the violation was willful or negligent. In determining the amount of the penalty, the Board shall consider the willfulness of the violation, damage to air, water, land or other natural resources of this Commonwealth or their uses, cost of restoration and abatement, savings resulting to the person in consequence of the violation and other relevant factors. The maximum civil penalty which may be assessed pursuant to this section is \$25,000 per violation. Each day of violation shall constitute a separate and distinct violation under this section.

When the Board proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the violation shall then have thirty days to pay the proposed penalty in full, or, if the person wishes to contest the amount of the penalty or the fact of the violation

183 to the extent not already established, the person shall forward the proposed amount of the penalty to the  
184 Director within the thirty-day period for placement in an escrow account with the State Treasurer or  
185 shall provide some other form of financial responsibility for the penalty in manner acceptable to the  
186 Board. If, through administrative or final judicial review of the proposed penalty, it is determined that  
187 no violation occurred or that the amount of the penalty shall be reduced, the appropriate amount shall  
188 be remitted to the person with any interest accumulated by the escrow deposit. Failure to forward the  
189 money or other form of financial responsibility shall result in a waiver of all legal rights to contest the  
190 violation or the amount of the civil penalty unless the person alleges financial inability to prepay or  
191 provide other financial responsibility. A hearing shall be conducted to consider the appellant's alleged  
192 inability to pay within thirty days of the date of the person notifying the Director of an alleged inability  
193 to pay. Following the hearing, the requirement to prepay the civil penalty or to provide other financial  
194 responsibility, if the person demonstrates that he is financially unable to pay, may be waived. If any  
195 person liable to pay a penalty neglects or refuses to pay the same after demand, the amount shall  
196 constitute a lien on all property owned by the person when a notice of lien incorporating a description  
197 of the property of the person subject to the action is filed with the appropriate court where the property  
198 is located.

199 H. A first violation of this article shall be punishable by a fine of not less than \$5,000 nor more than  
200 \$10,000. A second or subsequent violation shall be punishable by a fine of not less than \$10,000 nor  
201 more than \$25,000, and the court may order the operating privilege of the vehicle operator to be  
202 suspended for a period of up to one year, or both.

203 I. Any vehicle operating without the necessary written authorization shall be forfeited to the  
204 Commonwealth. Upon being condemned as forfeited in proceedings under Chapter 22 (§ 19.2-369 et  
205 seq.) of Title 19.2, the proceeds of sale shall be disposed of according to law.

206 § 10.1-1454.9. Fees and penalties to be paid into Virginia Waste Management Permit Program Fund.  
207 All written authorization fees and all penalties collected under this article shall be paid into the state  
208 treasury and be credited to the Virginia Waste Management Board Permit Program Fund  
209 (§ 10.1-1402.2) and shall be used for the purposes of implementing and enforcing this article.