

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 62.1-44.19:3 of the Code of Virginia, relating to local authority to test and*
 3 *monitor the land application of sewage sludge within its political boundaries.*

4 [H 1072]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 62.1-44.19:3 of the Code of Virginia is amended and reenacted as follows:**8 **§ 62.1-44.19:3. Prohibition on land application, marketing, and distribution of sewage sludge**
 9 **without permit; ordinances; notice requirement; fees.**10 A. 1. No owner of a sewage treatment works shall land apply, market, or distribute sewage sludge from
 11 such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System
 12 Permit or valid Virginia Pollution Abatement Permit.13 2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation
 14 prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site
 15 approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia
 16 Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge
 17 shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.). The addition of lime or
 18 deodorants to sewage sludge that has been treated to meet land application standards shall not constitute
 19 alteration of the composition of sewage sludge. The Department may authorize public institutions of higher
 20 education to conduct scientific research on the composition of sewage sludge that may be applied to land.21 3. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land
 22 apply, market, or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market, or
 23 distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit
 24 authorizing land application, marketing, or distribution of sewage sludge and specifying the location or
 25 locations, and the terms and conditions of such land application, marketing, or distribution. The permit
 26 application shall not be complete unless it includes the landowner's written consent to apply sewage sludge
 27 on his property.

28 4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

29 5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage
 30 sludge shall be complete unless it contains certification from the governing body of the locality in which the
 31 sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing
 32 body shall confirm or deny consistency within 30 days of receiving a request for certification. If the
 33 governing body does not so respond, the site shall be deemed consistent.34 B. The Board, with the assistance of the Department of Conservation and Recreation and the Department
 35 of Health, shall adopt regulations to ensure that (i) sewage sludge permitted for land application, marketing,
 36 or distribution is properly treated or stabilized; (ii) land application, marketing, and distribution of sewage
 37 sludge is performed in a manner that will protect public health and the environment; and (iii) the escape,
 38 flow, or discharge of sewage sludge into state waters in a manner that would cause pollution of state waters,
 39 as those terms are defined in § 62.1-44.3, shall be prevented.40 C. Regulations adopted by the Board, with the assistance of the Department of Conservation and
 41 Recreation and the Department of Health pursuant to subsection B, shall include:42 1. Requirements and procedures for the issuance and amendment of permits, including general permits,
 43 authorizing the land application, marketing, or distribution of sewage sludge;44 2. Procedures for amending land application permits to include additional application sites and sewage
 45 sludge types;46 3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing, or
 47 distribution;48 4. Requirements for determining the suitability of land application sites and facilities used in land
 49 application, marketing, or distribution of sewage sludge;

50 5. Required procedures for land application, marketing, and distribution of sewage sludge;

51 6. Requirements for sampling, analysis, recordkeeping, and reporting in connection with land application,
 52 marketing, and distribution of sewage sludge;53 7. Provisions for notification of local governing bodies to ensure compliance with §§ 62.1-44.15:3 and
 54 62.1-44.19:3.4;55 8. Requirements for site-specific nutrient management plans, which shall be developed by persons
 56 certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land

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HB1072ER

57 applied, and approved by the Department of Conservation and Recreation prior to permit issuance under
58 specific conditions, including but not limited to sites operated by an owner or lessee of a Confined Animal
59 Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, as
60 defined in § 62.1-44.17:1.1, sites where the permit authorizes land application more frequently than once
61 every three years at greater than 50 percent of the annual agronomic rate, and other sites based on
62 site-specific conditions that increase the risk that land application may adversely impact state waters;

63 9. Procedures for the prompt investigation and disposition of complaints concerning land application of
64 sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all
65 complaints received by them to the Department and to the local governing body of the jurisdiction in which
66 the complaint originates and (ii) localities receiving complaints concerning land application of sewage sludge
67 shall notify the Department and the permit holder. The Department shall maintain a searchable electronic
68 database of complaints received during the current and preceding calendar year, which shall include
69 information detailing each complaint and how it was resolved;

70 10. Procedures for receiving and responding to public comments on applications for permits and for
71 permit amendments authorizing land application at additional sites. Such procedures shall provide that an
72 application for any permit amendments to increase the acreage authorized by the initial permit by 50 percent
73 or more shall be treated as a new application for purposes of public notice and public hearings; and

74 11. Procedures for addressing administrative, staging, signage, and additional on-site and alternative
75 storage site requirements when routine and on-site storage facility capacity and holding times are anticipated
76 to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to
77 account for increased intensity, frequency, and duration of storm events.

78 D. Prior to issuance of a permit authorizing the land application, marketing, or distribution of sewage
79 sludge, the Department shall consult with and give full consideration to the written recommendations of the
80 Department of Health and the Department of Conservation and Recreation. Such consultation shall include
81 any public health risks or water quality impacts associated with the permitted activity. The Department of
82 Health and the Department of Conservation and Recreation may submit written comments on proposed
83 permits within 30 days after notification by the Department.

84 E. Where, because of site-specific conditions, including soil type, identified during the permit application
85 review process, the Department determines that special requirements are necessary to protect the environment
86 or the health, safety, or welfare of persons residing in the vicinity of a proposed land application site, the
87 Department may incorporate in the permit at the time it is issued reasonable special conditions regarding
88 buffering, transportation routes, slope, material source, methods of handling and application, and time of day
89 restrictions exceeding those required by the regulations adopted under this section. Before incorporating any
90 such conditions into the permit, the Department shall provide written notice to the permit applicant,
91 specifying the reasons therefor and identifying the site-specific conditions justifying the additional
92 requirements. The Department shall incorporate into the notice any written requests or recommendations
93 concerning such site-specific conditions submitted by the local governing body where the land application is
94 to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed
95 conditions.

96 F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons
97 applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this
98 subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit
99 shall be \$5,000. The fee for the reissuance, amendment, or modification of a permit for an existing site shall
100 not exceed \$1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected
101 under this section shall be exempt from statewide indirect costs charged and collected by the Department of
102 Accounts and shall not supplant or reduce the general fund appropriation to the Department.

103 G. There is hereby established in the treasury a special fund to be known as the Sludge Management
104 Fund, hereinafter referred to as the Fund. The fees required by this section and by subsection E of
105 § 62.1-44.16 shall be transmitted to the Comptroller to be deposited into the Fund. The income and principal
106 of the Fund shall be used only and exclusively (i) for the Department's direct and indirect costs associated
107 with the processing of an application to issue, reissue, amend, or modify any permit to land apply, distribute,
108 or market sewage sludge or industrial wastes, the administration and management of the Department's sewage
109 sludge and industrial wastes land application programs, including monitoring and inspecting, and the
110 Department of Conservation and Recreation's costs for implementation of the sewage sludge application
111 program and (ii) to reimburse localities with duly adopted ordinances providing for the testing and
112 monitoring of the land application of sewage sludge or solid or semisolid industrial wastes. The State
113 Treasurer shall be the custodian of the moneys deposited in the Fund. No part of the Fund, either principal or
114 interest earned thereon, shall revert to the general fund of the state treasury.

115 H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall
116 provide to the Board written evidence of financial responsibility, which shall be available to pay claims for
117 cleanup costs, personal injury, and property damages resulting from the transportation, storage, or land
118 application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting

119 the financial responsibility requirements of this section.

120 I. Any ~~county, city, or town~~ *locality* may adopt an ordinance that provides for the testing and monitoring
121 of the land application of sewage sludge within its political boundaries to ensure compliance with applicable
122 laws and regulations. *Such ordinance may provide for testing and monitoring for PFAS, as that term is*
123 *defined in § 62.1-44.34:29, using an applicable test method established by the U.S. Environmental Protection*
124 *Agency; however, no expenses for such testing and monitoring shall be eligible for reimbursement from the*
125 *Sludge Management Fund established in subsection G.*

126 J. The Department, upon the timely request of any individual to test the sewage sludge at a specific site,
127 shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to
128 a laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform
129 count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual
130 requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and
131 analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

132 K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit
133 holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee
134 for the local government where the site is located. The notice shall identify the location of the permitted site
135 and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by
136 providing a list of all available permitted sites in the locality at least 100 days prior to commencing the
137 application at any site on the list. This requirement shall not apply to any application commenced prior to
138 October 10, 2005. If the site is located in more than one county, the notice shall be provided to all
139 jurisdictions where the site is located.

140 L. The permit holder shall deliver or cause to be delivered written notification to the Department at least
141 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify
142 the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

143 M. The Department shall randomly conduct unannounced site inspections while land application of
144 sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this
145 section, § 62.1-44.19:3.1, or regulations adopted under those sections.

146 N. Surface incorporation into the soil of sewage sludge applied to cropland may be required when
147 practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S.
148 Department of Agriculture Natural Resources Conservation Service.

149 O. The Board shall develop regulations specifying and providing for extended buffers to be employed for
150 application of sewage sludge (i) to hay, pasture, and forestlands or (ii) to croplands where surface
151 incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and
152 specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended
153 buffers may be included by the Department as site specific permit conditions pursuant to subsection E, as an
154 alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the
155 Department or the local monitor.

156 P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage
157 sludge, pursuant to permits issued under this section. The person land applying sewage sludge shall (i)
158 provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is
159 waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department as provided for by
160 regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the
161 Commonwealth. The regulations shall include requirements and procedures for:

- 162 1. Collection of fees by the Department;
- 163 2. Deposit of the fees into the Fund; and
- 164 3. Disbursement of proceeds by the Department pursuant to subsection G.

165 Q. The Department, in consultation with the Department of Health, the Department of Conservation and
166 Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension
167 Service, shall establish and implement a program to train persons employed by those local governments that
168 have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge.
169 The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use
170 Regulations; (ii) land application methods and equipment, including methods and processes for preparation
171 and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv)
172 preparation and implementation of nutrient management plans for land application sites; (v) complaint
173 response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures;
174 (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement
175 of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall
176 emphasize in-field instruction and practical training. Persons employed by local governments shall
177 successfully complete such training before the local government may request reimbursement from the Board
178 for testing and monitoring of land application of sewage sludge performed by the person. The completion of
179 training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable
180 provision of law.

181 The Department may:

182 1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and
183 providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established
184 pursuant to this section; and

185 2. Request and accept the assistance and participation of other state agencies and institutions in preparing
186 and presenting the course of training established by this subsection.

187 R. Localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of
188 sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the
189 environment. Notwithstanding any contrary provision of law, a locality may by ordinance require that a
190 special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in
191 its jurisdiction, including any area that is zoned as an agricultural district or classification. Such ordinances
192 shall not restrict the storage of sewage sludge on a farm as long as such sludge is being stored (i) solely for
193 land application on that farm and (ii) for a period no longer than 45 days. No person shall apply to the State
194 Health Commissioner or the Department of Environmental Quality for a permit, a variance, or a permit
195 modification authorizing such storage without first complying with all requirements adopted pursuant to this
196 subsection.

197 S. (Expires July 1, 2030) The permitting requirements of this article shall not apply to any land
198 application of sewage sludge for a research project when such land is owned and operated by an institution of
199 higher education in the Commonwealth. At least 30 days prior to commencing any land application of sewage
200 sludge, the institution of higher education shall notify the Department and the owner of every adjoining
201 property of its intent to land apply such sewage sludge. The institution of higher education shall comply with
202 setback and recordkeeping requirements as outlined in the Virginia Pollution Abatement Permit Regulation
203 (9VAC25-32). As used in this subsection, "institution of higher education" means a public institution of
204 higher education, as that term is defined in § 23.1-100.