

1 SENATE BILL NO. 1365

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on Counties, Cities and Towns

4 on February 17, 2023)

5 (Patron Prior to Substitute--Senator Lewis)

6 A BILL to amend and reenact §§ 10.1-1400, 15.2-931, and 15.2-933 of the Code of Virginia, relating to
7 permitted materials recovery facilities by the Department of Environmental Quality.

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That §§ 10.1-1400, 15.2-931, and 15.2-933 of the Code of Virginia are amended and reenacted as**
10 **follows:**

11 **§ 10.1-1400. Definitions.**

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

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

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

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

24 "Board" means the Virginia Waste Management Board.

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

27 "Department" means the Department of Environmental Quality.

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

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

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

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

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

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

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

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

54 transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug
55 Control Act (§ 54.1-3400 et seq.); racketeering; or violation of antitrust laws;

56 6. A listing of all agencies outside the Commonwealth that have regulatory responsibility over the
57 applicant or have issued any environmental permit or license to the applicant within the past 10 years, in
58 connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or
59 hazardous waste;

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

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

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

69 "Equity" includes both legal and equitable interests.

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

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

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

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

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

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

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

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

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

98 "Key personnel" means the applicant itself and any person employed by the applicant in a
99 managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or
100 hazardous waste operations of the applicant in Virginia, but does not include employees exclusively
101 engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid
102 or hazardous waste and such other employees as the Director may designate by regulation. If the applicant
103 has not previously conducted solid waste or hazardous waste operations in Virginia, "key personnel" also
104 includes any officer, director, or partner of the applicant, or any holder of five percent or more of the
105 equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant
106 or of any key personnel is not a natural person, "key personnel" includes all key personnel of that entity,

107 provided that where such entity is a chartered lending institution or a reporting company under the Federal
108 Securities Exchange Act of 1934, "key personnel" does not include key personnel of such entity. Provided
109 further that "key personnel" means the chief executive officer of any agency of the United States or of any
110 agency or political subdivision of the Commonwealth and all key personnel of any person, other than a
111 natural person, that operates a landfill or other facility for the disposal, treatment, or storage of
112 nonhazardous solid waste under contract with or for one of those governmental entities.

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

116 "Materials recovery facility" means a solid waste management facility for the collection,
117 processing, and recovery of material such as metals from solid waste or for the production of a fuel from
118 solid waste. "Materials recovery facility" does not include the production of a waste-derived fuel product.

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

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

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

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

- 127 1. Is derived from any industrial, commercial, agricultural, or domestic activity.
- 128 2. Is processed at an advanced recycling facility or held at such facility prior to processing.
- 129 3. Is used or intended for use as a feedstock to manufacture crude oil, fuels, feedstocks,
130 blendstocks, raw materials, or other intermediate products or final products, using advanced recycling.
- 131 4. Is not mixed with solid waste or hazardous waste on site or during processing at the advanced
132 recycling facility at which it is processed.

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

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

142 "Radioactive waste" or "nuclear waste" includes:

143 1. "Low-level radioactive waste" material that:

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

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

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

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

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

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

156 1. Post-use polymers.

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

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

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

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

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

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

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

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

177 "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid,
178 liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining, and
179 agricultural operations, or community activities, but does not include (i) solid or dissolved material in
180 domestic sewage; (ii) solid or dissolved material in irrigation return flows or in industrial discharges that
181 are sources subject to a permit from the State Water Control Board; (iii) source, special nuclear, or by-
182 product material as defined by the Federal Atomic Energy Act of 1954, as amended; or (iv) post-use
183 polymers or recovered feedstocks that are (a) processed at an advanced recycling facility or (b) held at or
184 held for the purpose of conversion at such advanced recycling facility prior to conversion.

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

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

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

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

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

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

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

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

209 **§ 15.2-931. Regulation of garbage and refuse pickup and disposal services; contracting for**
210 **such services in certain localities.**

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

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

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

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

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

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

234 No ordinance adopted under this section shall apply to garbage, trash and refuse generated,
235 purchased or utilized by an entity engaged in the business of manufacturing, mining, processing, refining
236 or conversion except for an entity engaged in the production of energy or refuse-derived fuels for sale to
237 a person other than any entity controlling, controlled by or under the same control as the manufacturer,

238 miner, processor, refiner or converter. Nor shall such ordinance apply to (i) recyclable materials, which
239 are those materials that have been source-separated by any person or materials that have been separated
240 from garbage, trash and refuse by any person for utilization in both cases as a raw material to be
241 manufactured into a product other than fuel or energy, and any facility-generated waste residue from a
242 materials recovery facility, as defined in § 10.1-1400, that has been issued a permit by the Department of
243 Environmental Quality; (ii) construction debris to be disposed of in a landfill; or (iii) waste oil. Such
244 ordinances may provide penalties, fines and other punishment for violations.

245 Such localities are authorized to contract with any person, whether profit or nonprofit, for garbage
246 and refuse pickup and disposal services in their respective localities and to enter into contracts relating to
247 waste disposal facilities which recover energy or materials from garbage, trash and refuse. Such contracts
248 may make provision for, among other things, ~~(i)~~ (a) the purchase by the localities of all or a portion of the
249 disposal capacity of a waste disposal facility located within or outside the localities for their present or
250 future waste disposal requirements, ~~(ii)~~; (b) the operation of such facility by the localities, ~~(iii)~~; (c) the
251 delivery by or on behalf of the contracting localities of specified quantities of garbage, trash and refuse,
252 whether or not such counties, cities, and towns collect such garbage, trash and refuse, and the making of
253 payments in respect of such quantities of garbage, trash and refuse, whether or not such garbage, trash and
254 refuse are delivered, including payments in respect of revenues lost if garbage, trash and refuse are not
255 delivered, ~~(iv)~~; (d) adjustments to payments made by the localities in respect of inflation, changes in
256 energy prices or residue disposal costs, taxes imposed upon the facility owner or operator, or other events
257 beyond the control of the facility operator or owners, ~~(v)~~; (e) the fixing and collection of fees, rates or
258 charges for use of the disposal facility and for any product or service resulting from operation of the
259 facility; and ~~(vi)~~ (f) such other provision as is necessary for the safe and effective construction,
260 maintenance or operation of such facility, whether or not such provision displaces competition in any
261 market. Any such contract shall not be deemed to be a debt or gift of the localities within the meaning of
262 any law, charter provision or debt limitation. Nothing in the foregoing powers granted such localities
263 includes the authority to pledge the full faith and credit of such localities in violation of Article X, Section
264 10 of the Constitution of Virginia.

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

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

288 **§ 15.2-933. Ordinances requiring delivery of garbage, trash and refuse to certain facilities;**
289 **exceptions.**

290 A. Any ordinance requiring the delivery of all or any portion of the garbage, trash or refuse
291 generated or disposed of within a locality to waste disposal facilities located within or outside the locality,

292 or otherwise prohibiting the disposal of garbage, trash and refuse in or at any other place other than that
293 provided for the purpose, shall not apply to garbage, trash and refuse generated, purchased or utilized by
294 an entity engaged in the business of manufacturing, mining, processing, refining or conversion except for
295 an entity engaged in the production of energy or refuse-derived fuels for sale to a person other than any
296 entity controlling, controlled by or under the same control as the manufacturer, miner, processor, refiner
297 or converter. Nor shall such ordinance apply to (i) recyclable materials, which are those materials that
298 have been source-separated by any person or materials that have been separated from garbage, trash and
299 refuse by any person for utilization in both cases as a raw material to be manufactured into a new product
300 other than fuel or energy, and any facility-generated waste residue from a materials recovery facility, as
301 defined in § 10.1-1400, that has been issued a permit by the Department of Environmental Quality; (ii)
302 construction debris to be disposed of in a landfill; or (iii) waste oil.

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

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