



COMMONWEALTH of VIRGINIA

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October 29, 2010

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The Honorable C. Todd Gilbert
Member, House of Delegates
Post Office Box 309
Woodstock, Virginia 22664

Dear Delegate Gilbert:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether permits issued by the State Water Control Board (the "Board") for land application of sewage sludge must be in compliance with applicable requirements of § 62.1-44.19:3.¹

Response

It is my opinion that any permit issued by the Board for land application of sewage sludge must be in compliance with the applicable requirements of § 62.1-44.19:3.

Applicable Law and Discussion

Section 62.1-44.19:3(A)(1)² requires a permit from the Board for the owner of a sewage treatment works to land apply, market or distribute sewage sludge. Section 62.1-44.19:3(A)(3)³ similarly requires a permit to land apply, market or distribute sewage sludge under contract with the owner of a sewage treatment works. Other portions of the statute, among other provisions, specify requirements for the permits, authorize the Board to adopt regulations, and require notice to local governments.

The Board is an agency, created by statute in the Executive Department of the Commonwealth.⁴ It is elementary that "administrative agencies, in the exercise of their powers, may validly act only within

¹ VA. CODE ANN. § 62.1-44.19:3 (Supp. 2010).

² See § 62.1-44.19:3(A)(1) ("No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit or valid Virginia Pollution Abatement Permit.").

³ See § 62.1-44.19:3(A)(3) ("No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.").

⁴ See § 62.1-44.7 (2006). See also VA. CODE ANN. §§ 10.1-1183 & 10.1-1184 (2006 & Supp. 2010) (creating the Department of Environmental Quality, consolidating the Board into that department, and continuing the Board).

the authority conferred upon them by statutes vesting power in them.”⁵ Thus, it follows without question that the Board must act in compliance with its authorizing statute, in this case § 62.1-44.19:3.

Conclusion

Accordingly, it is my opinion that any permit issued by the Board for land application of sewage sludge must be in compliance with the applicable requirements of § 62.1-44.19:3.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

⁵ *Sydnor Pump & Well Co. v. Taylor*, 201 Va. 311, 316, 110 S.E.2d 525, 529 (1959) (setting aside an order of the State Corporation Commission as exceeding its statutory authority).