

US EPA ARCHIVE DOCUMENT

Attachment Number 2

Virginia Legislation Checklist

Virginia
Legislation Checklist

Titles of Commonwealth Legislation: Virginia Waste Management Act, Code Of Virginia (Va. Code), Title 10.1, Chapter 14, §§ 10.1-1400 through 1457 (1999).

Virginia Freedom of Information Act, Va. Code Title 2.1, Chapter 21, §§ 2.1-340 through 346.1 (1999).

Virginia Hazardous Waste Management Regulations, 9 Virginia Administrative Code (VAC) 20-60-10, *et seq.* (VHWMR)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
DEFINITIONS			
The Commonwealth needs the authority to define the following terms in a manner at least as stringent as the Federal program. If definitions of these terms appear in Commonwealth statutes, they must be at least as stringent as the analogous Federal Statutory or regulatory definition.			
Disposal	10.1-1400 "Disposal"	Yes	Virginia only defines "disposal" in the context of "solid waste" while the Federal definition also addresses "hazardous waste". This is of no consequence because "hazardous waste" is a subset of "solid waste". Va. Code §10.1-1400 (definition of "Hazardous waste").
Generator	10.1-1402(1) & (11) 9 VAC 20-60-260 A	Yes	The Commonwealth's statutes, like the Federal, do not contain a definition for this term; however, in § 10.1-1402(1), the Virginia Waste Management Board (Board) is given authority to supervise and control waste management activities. In addition, the Board has authority under § 10.1-1402(11) to promulgate and enforce regulations to carry out its powers and duties and the intent of the Virginia Waste Management Act (VWMA) and the Federal acts. The Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10, <i>et seq.</i>) (VHWMR) incorporate the federal definition of a generator at 9 VAC 20-60-260 A.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
Hazardous waste*	10.1-1400 "Hazardous waste"	Yes	Virginia's definition is identical to the Federal definition.
<p>* Note that the Commonwealth has the authority to regulate the recycling and reuse of hazardous waste in a manner at least as stringent as the Federal program does.</p>			
Manifest	10.1-1400 "Manifest"	Yes	Virginia's definition is equivalent to the federal definition found at 40 CFR 260.10.
Person	10.1-1400 "Person"	Yes	The definition of "person" in Va. Code § 10.1-1400 does not specifically list the following institutions that are listed in the federal definition: trust, firm, joint stock company, State, municipality, commission, political subdivision of a State, or an interstate body. However, the Commonwealth does refer to any "governmental body" and "any other legal entity". These broad terms cover those entities that are not specifically addressed by the definition.
Storage	10.1-1402(1) & (11)	Yes	The Commonwealth's statutes, unlike the Federal, do not contain a definition for this term; however, in § 10.1-1402(1), the Virginia Waste Management Board is given authority to supervise and control waste management activities. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of Chapter 14 and the Federal acts.
Transport	10.1-1400 "Transport" or "transportation" 9 VAC 20-60-260 A	Yes	Virginia's statutory definition is consistent with and broader in scope than the Federal definition for "transportation" found in 40 CFR Part 260.10. In 9 VAC 20-60-260, Virginia incorporates by reference the federal regulatory definition.

Virginia Legislative Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
Treatment	10.1-1400 "Treatment"	Yes	Virginia's definition of treatment specifically includes "incineration" as a form of treatment. This is equivalent since incineration does fall into the Federal definition. There are no significant differences between the Federal and Commonwealth definitions.
Treatment, Storage or Disposal (TSD) facility	10.1-1402(1) & (11)	Yes	The Commonwealth's statutes, like the Federal, do not contain a definition for this term; however, in § 10.1-1402(1), the Virginia Waste Management Board is given authority to supervise and control waste management activities. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of Chapter 14 and the Federal acts.
Waste (solid)	10.1-1400 "Solid waste"	Yes	Virginia's definition is equivalent.

HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR §271.9]

Authority for:			
1. HW characteristics	10.1-1402(8) & (11)	Yes	Section 10.1-1402(8) gives the Board the authority to designate, in accordance with criteria and listings identified under Federal statute or regulation, classes, types or lists of waste which it deems to be hazardous. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
2. HW list	10.1-1402(8) & (11)	Yes	Section 10.1-1402(8) gives the Board the authority to designate, in accordance with criteria and listings identified under Federal statute or regulation, classes, types or lists of waste which it deems to be hazardous. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.

STANDARDS FOR GENERATORS [See 40 CFR §271.10]

The Commonwealth needs the authority to regulate all generators EPA regulates under 40 CFR Part 262.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
<p>Authority to promulgate regulations on:</p> <p>1. I.D. numbers</p>	<p>10.1-1402(7) & (11) 10.1-1426(B)</p>	<p>Yes</p>	<p>Section 10.1-1402(7) gives the Board the authority to require any person who generates hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts. Also, § 10.1-1426(B) requires generators to report to the Director by such date as the Board specifies by regulation the following information: (1) the name and address of the generator, (2) the name and nature of the hazardous waste, and (3) the fact that the waste is being generated.</p>
<p>2. Requiring generator to determine whether waste is hazardous</p>	<p>10.1-1402(1) & (11)</p>	<p>Yes</p>	<p>The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.</p>
<p>3. Recordkeeping practices</p>	<p>10.1-1402(7) & (11)</p>	<p>Yes</p>	<p>Section 10.1-1402(7) requires any person who generates hazardous waste to maintain records, manifests, and records systems required pursuant to Federal statute or regulation. In addition, § 10.1-1402(11) provides the Board with the authority to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.</p>
<p>4. Packaging, labeling, marking and placarding practices</p>	<p>10.1-1402(1) & (11) 10.1-1450</p>	<p>Yes</p>	<p>In addition to the broad authorities under § 10.1-1402(1) & (11), § 10.1-1450 gives the Board the authority to promulgate regulations designating the manner and method by which hazardous materials shall be packed, identified, marked, and placarded.</p>
<p>5. Use of appropriate containers</p>	<p>10.1-1402(1) & (11) 10.1-1450</p>	<p>Yes</p>	<p>In addition to the broad authorities under § 10.1-1402(1) & (11), § 10.1-1450 gives the Board the authority to promulgate regulations designating the manner and method by which hazardous materials shall be packed, identified, marked, and placarded.</p>

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
6. Furnishing information	10.1-1402(6), (7) & (11)	Yes	Section 10.1-1402(6) gives the Board the authority to collect data necessary to conduct the Commonwealth waste programs, and § 10.1-1402(7) requires any person who generates hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, § 10.1-1402(11) provides the Board with the authority to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
7. Use of manifest consistent with DOT and EPA	10.1-1402(7) & (11) 10.1-1450	Yes	Section 10.1-1402(7) requires any person who generates hazardous waste to maintain manifest systems required pursuant to Federal statute or regulation. In addition, § 10.1-1402(11) provides the Board with the authority to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts. Also, § 10.1-1450 requires that the Board promulgate regulations designating the manner and method by which hazardous materials shall be transported.
8. International shipments	10.1-1402(1), (7) & (11)	Yes	In addition to the broad authorities at §§10.1-1402(1)&(11), under § 10.1-1402(7), the Board has the authority to require any person who generates hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation.
9. Designation of and delivery to permitted facilities	10.1-1402(1), (7) & (11)	Yes	In addition to the broad authorities at §§10.1-1402(1)&(11), under § 10.1-1402(7), the Board has the authority to require any person who generates hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation.
10. Investigation of unreturned shipments	10.1-1402(1), (7) & (11)	Yes	In addition to the broad authorities at §§10.1-1402(1)&(11), under § 10.1-1402(7), the Board has the authority to require any person who generates hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
11. Submission of reports	10.1-1402(7) & (11)	Yes	Section 10.1-1402(7) requires any person who generates hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, § 10.1-1402(11) provides the Board with the authority to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.

STANDARDS FOR TRANSPORTERS [See 40 CFR §271.11]

The Commonwealth needs the authority to regulate all transporters EPA regulates under 40 CFR Part 263.

Authority to promulgate regulations on:	Commonwealth Cite	Coverage Yes/No?	Comment
1. I.D. numbers	10.1-1402(7) & (11) 10.1-1426(B)	Yes	Section 10.1-1402(7) gives the Board the authority to require any person who transports hazardous waste to maintain records, manifests and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts. Also, § 10.1-1426(B) requires transporters to report to the Director by such date as the Board specifies by regulation the following information: (1) the name and address of the transporter, (2) the name and nature of the hazardous waste, and (3) the fact that the waste is being transported.
2. Recordkeeping	10.1-1402(7) & (11)	Yes	Section 10.1-1402(7) gives the Board the authority to require any person who transports hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
3. Labeling	10.1-1402(1) & (11) 10.1-1450	Yes	In addition to the broad authorities under § 10.1-1402(1) & (11), § 10.1-1450 gives the Board the authority to promulgate regulations designating the manner and method by which hazardous materials shall be packed, identified, marked, and placarded.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
4. Compliance with manifest system	10.1-1402(7) & (11) 10.1-1450	Yes	Section 10.1-1402(7) gives the Board the authority to require any person who transports hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts. Also, § 10.1-1450 requires that the Board promulgate regulations designating the manner and method by which hazardous materials shall be transported.
5. Spill notification	10.1-1402(7) & (11)	Yes	Section 10.1-1402(7) gives the Board the authority to require any person who transports hazardous waste to maintain records, manifests and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
6. Spill clean-up	10.1-1402(1), (11), (18) & (19)	Yes	Under § 10.1-1402(1), the Board has authority to supervise and control waste management activities in the Commonwealth. In addition, § 10.1-1402(11) provides the Board with the authority to promulgate regulations to carry out its powers and duties and the intent of Chapter 14 and the Federal acts. Also, § 10.1-1402(18) provides the authority for the Board to make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources and the environment from the release of waste. Section 10.1-1402(19) authorizes the Board to take actions to contain or clean up sites or to issue orders to require the clean up of sites where solid or hazardous waste or other substances within the jurisdiction of the Board have been improperly managed.
7. Transportation to permitted facility	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at § 10.1-1402(1) & (11) provides the necessary coverage.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
8. Consistency with DOT regulations	10.1-1402(1) & (11) 10.1-1450	Yes	In addition to the broad authorities under § 10.1-1402(1) & (11), § 10.1-1450 gives the Board the authority to promulgate regulations designating the manner and method by which hazardous materials shall be packed, identified, marked, and placarded.
9. Authority to require permits for transporters	10.1-1426(A)	Broader in scope	Unlike the Federal statutes and regulations, under §10.1-1426(A), the Commonwealth requires that no person shall transport hazardous waste without a permit from the Director. The Commonwealth's requirement is broader in scope because the Federal program does not require transporters to have permits.

STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12]

The Commonwealth needs the authority to regulate all of the owners and operators of hazardous waste management facilities whom EPA regulates.

<p>Authority to promulgate regulations on:</p> <p>1. I.D. numbers</p>	<p>10.1-1402(7) & (11) 10.1-1426(B)</p>	<p>Yes</p>	<p>Section 10.1-1402(7) gives the Board the authority to require any person who stores or provides treatment for or disposal of hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts. Also, § 10.1-1426(B) requires any person who stores or provides treatment for or disposal of hazardous waste to report to the Director by such date as the Board specifies by regulation the following information: (1) the name and address of the facility, (2) the name and nature of the hazardous waste, and (3) the fact that the waste is being stored, treated, or disposed.</p>
--	---	------------	---

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
2. Recordkeeping	10.1-1402(7) & (11)	Yes	Section 10.1-1402(7) gives the Board the authority to require any person who stores or provides treatment for or disposal of hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
3. Reporting	10.1-1402(7) & (11)	Yes	Section 10.1-1402(7) gives the Board the authority to require any person who stores or provides treatment for or disposal of hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
4. Monitoring	10.1-1402(1) & (11)	Yes	Under § 10.1-1402(1), the Board has authority to supervise and control waste management activities in the Commonwealth. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
5. Inspecting	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
6. Compliance with manifest system	10.1-1402(7) & (11)	Yes	Section 10.1-1402(7) gives the Board the authority to require any person who stores or provides treatment for or disposal of hazardous waste to maintain records, manifests, and reporting systems required pursuant to Federal statute or regulation. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
7. Operating methods	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
8. Location, design, construction	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
9. Contingency plans	10.1-1402(1), (7) & (11)	Yes	In addition to its broad authorities at §§ 10.1-1402(1) & (11), 10.1-1402(7) gives the Board the authority to require any person who stores or provides treatment for or disposal of hazardous waste to maintain records, manifests and reporting systems required pursuant to Federal statute or regulation.
10. Training	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
11. Ownership	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
12. Closure and Post-Closure activities	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
13. Continuity of operation	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
14. Financial responsibility	10.1-1402(1) & (11) 10.1-1428	Yes	In addition to the broad authorities at §§ 10.1-1402(1) & (11), § 10.1-1428 provides the Board with authority to promulgate regulations which ensure that, if a TSD facility is closed or abandoned, the costs associated with protecting the public health and safety may be recovered from the responsible person.
15. General conditions (see 40 CFR 270.30)	10.1-1402(1) & (11) 10.1-1426(C)	Yes	Section 10.1-1426(C) specifies that any permit shall contain the conditions or requirements required by the Board's regulations and the Federal acts. The Commonwealth's authority at §§ 10.1-1402(1) & (11) also provides the necessary coverage.

PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR §271.15 and 271.13]

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
1. Require permits for owners and operators of all TSD facilities	10.1-1402(1) & (11) 10.1-1426(A)	Yes	Section 10.1-1426(A) specifies that no person shall store, provide treatment for, or dispose of a hazardous waste without a permit from the Director. Under § 10.1-1402(1), the Board has authority to supervise and control waste management activities in the Commonwealth. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
2. Impose construction ban	10.1-1402(1) & (11)	Yes	Under § 10.1-1402(1), the Board has authority to supervise and control waste management activities in the Commonwealth. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts.
3. Prohibit operation of facilities without permits (State may have an analogue to interim status)	10.1-1402(1) & (11) 10.1-1426(A)	Yes	The Board's authorities at §§ 10.1-1426(A), 10.1-1402(1) & (11) provide the necessary coverage.
4. Require permit application information	10.1-1402(1) & (11) 10.1-1426(A)	Yes	The Board's authorities at §§ 10.1-1426(A), 10.1-1402(1) & (11) provide the necessary coverage.
5. Require permits to contain all technical and administrative standards	10.1-1402(1) & (11) 10.1-1426(C)	Yes	Section 10.1-1426(C) specifies that any permit shall contain the conditions or requirements required by the Board's regulations and the Federal acts. The Commonwealth's authority at §§ 10.1-1402(1) & (11) also provides the necessary coverage.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
6. Provide for permit modifications and termination (revocation)	10.1-1402(1) & (11) 10.1-1427	Yes	Section 10.1-1427(A) specifies that any permit issued by the Director pursuant to 10.1-1426 may be revoked, amended or suspended on any of the listed grounds or on such other grounds as may be provided by the regulations of the Board. Section 10.1-1427(B) also provides the authority for the Director to amend or attach conditions to a permit when (1) significant change in the manner and scope of facility operations; (2) possibility of pollution causing significant adverse effects on the air, land, surface water or ground water; (3) the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and environment; or (4) changes in applicable regulatory requirements. The Commonwealth's authority at §§ 10.1-1402(1) & (11) also provides the necessary coverage.
7. Allow public disclosure of name and address of permit applicants and permittees	10.1-1402(1) & (11) 2.1-342(A) & -342.01	Yes	Section 2.1-342(A) specifies that all official records shall be open to inspection and copying by any citizens of the Commonwealth and that access to such records shall not be denied, subject to the exceptions of section 2.1-342.01. The exceptions do not apply to the required information. The Commonwealth's authority at §§ 10.1-1402(1) & (11) also provides the necessary coverage.
PUBLIC PARTICIPATION			
<p>Authority to provide:</p> <p>1. Draft permit, fact sheet, etc.</p>	10.1-1402(1) & (11)	Yes	The Virginia statutes do not specifically address public participation in the permitting process. However, under § 10.1-1402(1), the Board has authority to supervise and control waste management activities in the Commonwealth. In addition, the Board has authority under § 10.1-1402(11) to promulgate regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts. Therefore, §§10.1-1402(1) & (11) provide authority to promulgate regulations for public participation procedures.

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
2. Notice of all draft permits by radio broadcasts and notices in newspapers, etc.	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
3. 45-day public comment period on all draft permits	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
4. Informal hearing with written notice of opposition	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.
5. Consideration of and response to public comments	10.1-1402(1) & (11)	Yes	The Commonwealth's authority at §§ 10.1-1402(1) & (11) provides the necessary coverage.

INSPECTIONS

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
<p>1. Right to enter, inspect and obtain samples (at all regulated premises and where records are kept)</p>	<p>10.1-1456 9 VAC 20-60-1060 I 19.2-393 through -397</p>	<p>Yes</p>	<p>Section 10.1-1456 states that upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Director, or Department, any regulations of the Board, any order of the Board or Director, or any conditions in a permit, license or certificate issued by the Board or Director are being complied with. This authority includes the right to enter where records are kept and to obtain copies of such records. If consent is refused, officials may make application to a circuit court for the issuance of an inspection warrant pursuant to Code §§ 19.2-393 through 19.2-397. In addition, Virginia 9 VAC 20-60-1060 I provides that the Director or his authorized representative may have access to and copy at reasonable times any records which are kept under the conditions of the permit. The term "property" as used in the context of Code § 10.1-1456 and 19.2-393 includes realty as well as personalty such as vehicles and conveyances.</p>
<p>ENFORCEMENT [See 40 CFR 271.16]</p>			
<p>Authority to:</p>			

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
1. Immediately restrain unauthorized activity	10.1-1402(18), (19) & (21). 10.1-1455(C), (D)&(G)	Yes	<p>The Commonwealth has both administrative and judicial mechanisms to stop any unauthorized activity under the Hazardous Waste Program that is endangering public health or the environment. These authorities and mechanisms are summarized as follows. The Board has been given the authority to “[t]ake actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction of the Board have been improperly managed,” Va. Code §10.1-1402(19), and to “[m]ake separate orders and regulations it deems necessary to meet any emergency to protect the public health, natural resources and the environment from the release or <i>imminent threat of release</i> of waste.” Va. Code §10.1-1402(18) (emphasis added). Also, the Board has authority to abate hazards and nuisances <i>dangerous</i> to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.” Va. Code §10.1-1402(21) (emphasis added). The Board has authority to issue orders to require any person to comply with the provisions of any law administered by the Board, the Director, or the Department, any condition of a permit or certification, or any regulations promulgated by the Board or to comply with any case decision. Va. Code §10.1-1455C. The Board also has separate authority to issue administrative orders. Va. Code §10.1-1455G. In addition, the Board has authority to issue special orders after informal administrative procedures, though the penalties in this type of proceeding are limited to \$10,000 and the Director may not delegate his authority for special orders. Va. Code §10.1-1182, -1186(6). The Board has specific authority to issue emergency orders. Va. Code §10.1-1455C, G. Finally, the Commonwealth has authority to seek injunction, mandamus or other appropriate remedy to compel a person to obey regulations, permits, certifications, orders, or provisions of the Waste Management Act. Va. Code §10.1-1455D.</p>

Virginia Legislation Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
2. Sue to enjoin any threatened or continuing program violation without prior revocation of permit	10.1-1455(D)	Yes	The express authority to bring suit for injunctive relief where there are violations of program requirements is contained in Va. Code § 10.1-1455(D). Va. Code § 10.1-1455(D) specifies that any person violating any regulation, order, permit condition, or statute may be compelled to comply therewith by injunction in a proceeding instituted in an appropriate court by the Board or Director. That section imposes no condition precedent upon the Director's ability to seek injunctive relief. This authority extends to threatened or continuing program violations (see Comment above).
3. Obtain civil penalties for any violation (maximum no less than \$10K per day)	10.1-1455(A)	Yes	Under § 10.1-1455(A), the Board is authorized to obtain a civil penalty of not more than \$25,000 for each day of any violation of the statutes, regulations, permit conditions, or order.
4. Obtain criminal penalties for specified maximum violations (no less than \$10K per day and imprisonment with maximum no less than 6 months); burden of proof no greater than under Federal law	10.1-1455(B)	Yes	Under § 10.1-1455(B), any person who knowingly transports any hazardous waste to an unpermitted facility, who knowingly transports, treats, stores, or disposes of hazardous waste without a permit or in violation of a permit; or who knowingly makes false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document used for compliance with the hazardous waste program shall be guilty of a felony punishable by a term of imprisonment <u>of not less than one year nor more than five years and a fine of not more than \$25,000 for each violation, either or both.</u> For State authorization, 40 CFR 271.16(a)(3)(ii) requires States to have the authority to obtain criminal penalties for specific violations in the amount of <u>at least \$10,000 per day for each violation and imprisonment for at least six months.</u> At Va. Code § 10.1-1400, Virginia has adopted the federal definition for hazardous waste at RCRA § 1004(5). The Commonwealth is not seeking authorization for used oil requirements at this time. As required under 40 CFR 271.16(b)(2), the burden of proof and degree of knowledge or intent for establishing violations are not greater than the burden of proof or degree of knowledge or intent required by EPA.

Virginia Legislative Checklist (cont'd)

Statutory Element	Commonwealth Cite	Coverage Yes/No?	Comment
5. Allow intervention (See 40 CFR 271.16(d))	10.1-1402(11) 9 VAC 20-60-70 G 2	Yes	The Commonwealth's statutes do not specifically provide for citizen intervention. However, under § 10.1-1402(11), the Board has the authority to promulgate and enforce regulations to carry out its powers and duties and the intent of the VWMA and the Federal acts. Virginia does include in its regulations at 9 VAC 20-60-70 G 2 that the department will not oppose intervention by any citizen in a suit brought before a court by the department as a result of an enforcement action. The Commonwealth's regulation incorporates in its language the state-specific intent of 40 CFR 271.16(d)(2)(ii).
MISCELLANEOUS			
1. Authority to share all information with EPA	10.1-1402(2) & (9)	Yes	The Board may consult, advise and coordinate with Federal agencies for the purpose of implementing the Waste Management Act and the Federal acts pursuant to § 10.1-1402(2). Also, § 10.1-1402(9) authorizes the Board to consult and coordinate with the heads of appropriate Federal agencies for the purpose of achieving maximum effectiveness and enforcement of the Waste Management Act.
2. Variance and waiver provisions	10.1-1402(1) & (11)	Yes	Section 10.1-1402(1) provides the Board with the authority to supervise and control waste management activities in the Commonwealth. Under § 10.1-1402(11), the Board has authority to promulgate regulations and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of Chapter 14 and the Federal acts.
3. Exemptions	10.1-1402(1) & (11)	Yes	Section 10.1-1402(1) provides the Board with the authority to supervise and control waste management activities in the Commonwealth. Under § 10.1-1402(11), the Board has authority to promulgate regulations and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of the VWMA and the Federal acts.
4. Siting	Title 10.1, Chapter 14, Article 6	Yes	The Commonwealth's statutes contain siting requirements in §§ 10.1-1433 through 10.1-1449.