

US EPA ARCHIVE DOCUMENT

REVISED  
PROGRAM  
DESCRIPTION

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## Section 1. Introduction

Since the inception of the federal hazardous waste management program, the Commonwealth has participated in the process created by the EPA for states to assume their roles in this important national program. As a part of this process, Virginia received approval for Phase I (November 3, 1981), Phase IIA (August 17, 1983) and Phase IIB (August 17, 1983) Interim Authorization. On December 18, 1984, the EPA Region III Administrator granted final authorization to the Virginia Department of Health to operate the base hazardous waste management program.

The 1986 session of the Virginia General Assembly created the Department of Waste Management under the new cabinet-level Secretary of Natural Resources. The same action made the new Department the successor in interest to the Department of Health in authority, duty and responsibility for solid, hazardous, or radioactive waste. The Assembly also retained in force all the regulations that the Board of Health had issued in those areas. The 1992 General Assembly established the new Department of Environmental Quality consisting of the Department of Air Pollution Control, the Department of Waste Management, the State Water Control Board and the Council on the Environment.

The Virginia Waste Management Act (VWMA) enacted by the 1986 session of the General Assembly and recodified in 1988 as Chapter 14, Title 10.1, Code of Virginia, forms the basis for the Virginia program. The 1988 session of the General Assembly amended §§ 10.1-1400 and 10.1-1402 to define mixed low-level radioactive waste and to authorize the Board to regulate its management. During its 1990 session, the General Assembly expanded the provisions to include other radioactive wastes (§ 10.1-1400) and the authorization for the Board to regulate all mixed radioactive waste (§ 10.1-1402).

During the years it has operated its program, the Commonwealth made all the changes that were necessary to keep it consistent with the federal program authorization requirements. Since the receipt of the full authorization, the Department submitted program change applications through RCRA Cluster I.

As required by the Part 271, Title 40, Code of Federal Regulations (CFR), this revised Program Description (prepared in accordance with 40 CFR 271.6) and other pertinent documents replace those submitted for base level authorization of 1984 and are being submitted to obtain the Administrator's approval of the program changes associated with the Non-HSWA Clusters I through VI (including the mixed waste program), HSWA Clusters I and II, and RCRA Clusters I through IV (excluding check lists 112, 122, and 130) and Cluster V as described in checklists 135, 136, 137 (excluding January 3, 1995 amendment), and 142 (A through E). The Commonwealth's regulatory framework for hazardous waste management is identical to or equivalent with that defined in Title 40 of the Code of Federal Regulations as it existed through September 19, 1994, and amended by the May 11, 1995 Universal Waste Rule. The Department of Environmental Quality makes these regulations and pertinent parts of the federal regulations (July 1, 1994 and July 1, 1995) available through its website ([www.deq.state.va.us](http://www.deq.state.va.us)). The Commonwealth is therefore seeking full and final authorization except for six items.

- While the Commonwealth's freedom of information statutes require greater openness and responsiveness to public inquiry than the federal statutes, it is postponing its request for the authorization of the freedom of information related provisions of the federal program.
- The Commonwealth has incorporated 40 CFR 279 into its regulations and can enforce the provisions thereof; however, the maximum criminal penalty for violations involving non-hazardous used oil is one year in prison and a fine of \$2,500. This criminal sanction is insufficient to meet the test of 40 CFR 271.16(a)(3)(ii); therefore, the Commonwealth does not seek authorization for the used oil provisions of 40 CFR 279 at this time.

- The Commonwealth does not seek authorization for review of petitions regarding the exclusion of a particular waste at a specific facility from being listed as a hazardous waste (40 CFR 260.22). These matters will not be entertained as petitions; however, they will be considered during the Commonwealth's rulemaking process. Such petitions are directed to the Administrator by the regulations and will be transferred to the USEPA Regional Office if received by the Department. The Administrator or his designee may continue to review these petitions and render a final decision in accordance with federal regulations. The Department may use its variance authority to recognize the delisting pending the next rulemaking opportunity.
- The Commonwealth does not seek authorization for review of petitions regarding equivalent testing or analytical methods (40 CFR 260.21).
- At this time, the Commonwealth does not seek authorization for review of petitions to exclude certain recycled wastes that are hazardous waste from being a solid waste (40 CFR 260.31). It intends to develop a process for managing this activity, and will seek authorization for the element when the process is in place in the regulations.
- In addition to federal universal wastes, the Commonwealth has adopted provisions that regulate mercury-containing lamps as a universal waste. The Commonwealth is not seeking authorization for the additional universal waste at this time.

The purpose of Section 1 is to introduce the Virginia Department of Environmental Quality and explain its history as an agency, to set out the extent of the authorization for which this application is made and to indicate the nature of the remainder of the document. Section 2 focuses, in Part A, on the changes to the regulation since base authorization in 1984 and indicates which elements of the current regulatory program of the Commonwealth are more stringent or broader in scope than the federal program. Part B discusses, item by item, how the Commonwealth's program is equivalent and no less stringent regarding key statutory tests of RCRA. Section 3 explains the structure and resources of the Department of Environmental Quality that are available for conducting the hazardous waste management program and the relationship of the Department with the USEPA. Section 4 lists the personnel and financial resources available for the program. Twelve significant processes used by the Department to conduct the program are explained in Section 5, including regulatory development, permitting and corrective action. Section 6 explains how compliance with the regulations will be determined and the procedures for enforcement action in case of non-compliance. Estimates of the numbers of regulated activities that will provide the caseload of the program are listed in Section 7. Section 8 would normally contain a list of forms used by the program; however, in this case, all the forms are a part of either the federal or Commonwealth regulations. Section 9 consists of the Appendices that support the other sections. These nine parts work together to describe in detail the program for which authorization is sought, to show not only that the program is equivalent and consistent with the analogous federal program, but to demonstrate that the Department's program has the developed systems and resources it must have to be the equivalent of the federal effort.

## SECTION 2. PROGRAM SCOPE, STRUCTURE, COVERAGE, AND PROCESSES

### A. SCOPE AND COVERAGE OF PROGRAM

The Virginia Hazardous Waste Management Program provides the coverage corresponding to 40 CFR Parts 124, 261-266, 268, 270, 273, and 279 and 49 CFR Part 172, 173, 178, and 179 as required by the regulations of the federal program in 40 CFR 271. This coverage was achieved through a series of regulatory and programmatic actions. The Virginia Hazardous Waste Management Regulations (VHWMR), 9 VAC 20-60-10, *et seq.* (formerly VR 672-10-1), have undergone the following significant actions changes:

1. Amendment 1, effective October 1, 1981, represented Virginia's first step toward assuring continuing conformity with the federal program by amending its penalties to the levels required by 40 CFR 271.16.
2. The Virginia Board of Health adopted Amendment 2 to the Regulations on July 21, 1982. This Amendment contained all changes to the federal regulations as of June 30, 1981, and included final facility regulations as of that date. The Amendment became effective on December 1, 1982. It greatly changed the method used to describe the listing of hazardous wastes. The regulations initially adopted the federal listings by reference. At the urging of the regulated community, Virginia switched to duplicating all federal listings as they appear in 40 CFR 261.
3. On March 16, 1983, the Board of Health adopted Amendment 3. It contained regulations addressing financial assurance, liability, closure and post-closure plans and cost estimates. The regulations became effective July 1, 1983. The Amendment set up the state financial assurance requirements, mirroring those contained in 40 CFR Parts 264 and 265 -- with one significant exception. At that time, § 32.1-182 of the Code of Virginia exempted local governmental agencies from the financial assurance requirements. The Attorney General addressed this discrepancy in the Phase II A and B Interim Authorization. At that time, the Commonwealth had to commit itself to assume financial responsibility for a facility that was owned and operated by a local governmental agency before a permit could be issued. Facilities, owned by local governments but operated by private entrepreneurs or non-governmental agencies, were not exempt from the financial assurance requirements. In response to EPA comments on the Attorney General's Statement, the Department altered the Memorandum of Agreement. The Agreement assured that if local government found itself in need of interim status, the State would call in the permit application. This would make the application incomplete and the Department would not issue the permit. While this arrangement was acceptable under Interim Authorization, EPA would not accept this solution for Final Authorization. Consequently, amendments to the State's basic legislation were introduced and passed to bring the State's program into conformance with the federal requirements.
4. The Board of Health promulgated Amendment 4 on July 13, 1983. This Amendment included all changes to federal regulations issued by EPA on or before July 26, 1982. The effective date of these regulations was November 1, 1983.
5. Amendment 5 contained all changes in the federal regulations between August 1, 1982, and August 1, 1983. The effective date of the amendment was September 20, 1984. The Department of Health received final authorization to conduct the Virginia Hazardous Waste Management program on December 18, 1984.
6. By amending the Virginia Code, the 1983 General Assembly authorized the Board of Health to charge permit application fees to provide support to the hazardous waste management facilities permitting program. The Assembly also set up a special fund for this purpose. Amendment 6 detailed the fee system and fee schedule.

7. Amendment 7 contained all the changes in the federal regulations promulgated between August 1, 1983, and July 1, 1985. The effective date of the amendment was April 1, 1986. It included the major redefinition of solid wastes and HSWA requirements that appeared in final form before July 1, 1985.

8. The 1986 session of the General Assembly created the Department of Waste Management (DWM) under the supervision of the new Secretary of Natural Resources. The Assembly also transferred the responsibility for the Hazardous Waste Management Program from the Department of Health to the Department of Waste Management and created the Virginia Waste Management Board as the governing body. Attachment 3 to this document shows the Virginia Waste Management Act as recodified in 1988 and amended since that date, to include amendments made by the 1999 session of the General Assembly. This Act empowered the newly created Department to conduct the existing program.

9. On September 22, 1987, the Virginia Waste Management Board approved Amendment 8 with an effective date of January 1, 1988. The amendment contained changes in the federal regulations promulgated between July 1, 1985, and October 24, 1986. It included the HSWA codification rule, small quantity generator requirements, settlement agreement, liability coverage, and the tank storage and treatment standards, as well as other minor changes issued by the EPA during that period.

10. On October 18, 1988, the Virginia Waste Management Board promulgated Amendment 9 to the Virginia Hazardous Waste Management Regulations with an effective date of January 1, 1989. The amendment contained all the changes in the federal regulations adopted before December 31, 1987. It included changes in the hazardous waste listings, land disposal restrictions, closure requirements for interim status surface impoundments, listing of hazardous constituents for groundwater monitoring, provisions for the corporate guarantee, HSWA codification rule 2, and standards for miscellaneous units.

11. On November 20, 1989, the Virginia Waste Management Board promulgated Amendment 10 to the Virginia Hazardous Waste Management Regulations with an effective date of February 1, 1989. The amendment contained all the changes in the federal regulations adopted before January 31, 1989. It included changes in the hazardous waste listings, treatability studies sample exemption, land disposal restrictions for first third scheduled wastes, financial responsibility changes, changes in standards for tank systems, new permit modification procedures, and new statistical methods for evaluating groundwater monitoring data.

12. The 1990 session of the General Assembly amended the Waste Management Act by increasing the penalties from \$10,000 to \$25,000 and by creating a new "superpenalty" similar to RCRA § 3008(e) for knowing violations of hazardous waste standards that place another person in imminent danger of death or serious bodily injury (Va. Code § 10.1-1455H). The 1991 session of the General Assembly also added a provision that any person who knowingly and willingly abandons a hazardous waste management facility without a proper closure or without providing adequate financial assurance may be guilty of Class 4 felony (Va. Code § 10.1-1428.F). The 1992 session of the General Assembly further added a provision that a permit may be revoked by the Director if any key personnel have been convicted of a list of felonies or have been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth, or any other state, and the Director determines that such a conviction or adjudication is sufficiently probative of the permittees' inability or unwillingness to operate the facility in a lawful manner as to warrant such revocation or denial (Va. Code § 10.1-1427.A.).



13. Amendment 11 to the Hazardous Waste Management Regulations, effective July 1, 1991, contained all federal changes from February 1989 to June 29, 1990, and added land disposal restrictions for both the second and third third of wastes, eliminated certain exclusions for mining wastes, changed and inserted new listings for hazardous wastes, promulgated the toxicity characteristic changes to include technical corrections, and added standards that limit air emissions at hazardous waste treatment storage and disposal facilities.

14. Amendment 12, effective January 14, 1993, contained all federal changes between July 1, 1990, and July 17, 1991. It contained changes to the toxicity characteristics, hazardous waste listings, technical corrections to land disposal restrictions and air emission standards, and addition of requirements for boilers and industrial furnaces and wood preserving wastes. Administrative stays were not promulgated in Virginia.

15. Amendment 13, effective September 8, 1993, was devoted solely to the changes in the federal requirements for wood preserving wastes promulgated on December 24, 1992.

16. Amendment 14, effective February 17, 1999, removed most of the text of the regulations as they had previously existed and substituted new text incorporating the federal regulatory text in Title 40 of the Code of Federal Regulations. Incorporated text included all or parts of 40 CFR 124, 260, 261, 262, 263, 264, 265, 266, 268, 270, 273, and 279. Because the Commonwealth made this change late in the amendment process, it was necessary to adopt the incorporated text of the federal regulations as they existed on September 19, 1994, except that the Universal Waste Rule modifications of May 11, 1995, were also incorporated. Where the Commonwealth had in place more stringent or broader rules, exceptions to the incorporation by reference were listed in the regulations. Chapters of the regulations addressing the submission of notices of hazardous waste management facilities, regulation of transporters, permitting procedures and fees, and administrative procedures were modified but continued as a part of the regulations in addition to the incorporation of federal text by reference. A new chapter was added to the regulation to list waste specific rules for universal waste recognized by the Commonwealth, but not a part of the federal program. In Amendment 14, mercury-containing lamps was the only waste in this category.

These amendments through Amendment 14 have modified the Commonwealth's regulations to reflect changes in the federal program associated with the Non-HSWA Clusters I through VI (including the mixed waste program), HSWA Clusters I and II, and RCRA Clusters I through IV (excluding check lists 112, 122, and 130) and Cluster V as described in checklists 135, 136, 137 (excluding the January 3, 1995 amendment), and 142 (A through E).

In the implementation of its program for radioactive mixed wastes, the Commonwealth will defer determinations of national security related inconsistencies between the requirements of the Atomic Energy Act and those of RCRA to the proper federal department, such as the Department of Energy or Department of Defense. Any determination of inconsistency between the technical requirements of the Atomic Energy Act and the technical requirements of RCRA shall be made after consultation with the Commonwealth, the appropriate federal Secretary, and the Administrator of EPA. If such persons cannot agree on the determination, the Commonwealth will make the final determination of technical inconsistency according to its authorization by EPA.

Consolidated and special checklists have been incorporated into the Demonstration of Adequate Authority and indicate the difference between the federal program and Virginia's. Virginia's program has conformed to every major requirement instituted by EPA for Final Authorization and program revisions, and is, therefore, equivalent to the federal program.

## DIFFERENCES BETWEEN FEDERAL AND COMMONWEALTH REGULATIONS

Because the Virginia Waste Management Board must adopt each amendment of the federal regulations as an amendment to Virginia regulations before it becomes effective in the Commonwealth, Virginia regulations lag federal regulations chronologically. Eventually, the difference should be eighteen months or less if streamlined adoption procedures apply. Each year, on or about July 1, an amendment of Virginia's regulations will be initiated to incorporate by reference the changes in federal regulations for the preceding year as set out in federal register notices of the period and to make other necessary corrections and changes. Except for the adoption time difference, Virginia's regulations are equivalent but different, broader in scope, more stringent or identical to federal regulations.

In some areas Virginia regulations are more stringent than federal regulations. It should be noted that the regulations contain two types of provisions: those that are incorporations of federal regulations and specific regulation. In some cases, both types will address the same subject. Both incorporated and specific requirements must be complied with if possible. If mutually exclusive requirements result from the incorporated and specific requirements, the more specific requirement is the equivalent or more stringent requirement and must be complied with in lieu of the incorporated requirement. The following list contains the principal Virginia regulations that are more stringent than the federal requirements.

1. In 9 VAC 20-60-261 B 5, a conditionally exempt small quantity generator cannot send exempt hazardous waste to a solid waste facility unless that facility has written permission from the Department to receive such wastes.
2. 9 VAC 20-60-261 B 1 requires agreements submitted in accordance with 40 CFR 261.4(b)(11)(ii) to be submitted to both the USEPA and the Director.
3. In 9 VAC 20-60-262 B 4, generators accumulating hazardous waste in accordance with 40 CFR 262.34 on March 1, 1988, were required to notify the Department of that activity. Generators intending to open an accumulation area after March 1, 1998 are required to notify the Department of that intent 15 days before establishing the accumulation area. New generators are required to identify the location of accumulation areas when filing a Notification of Hazardous Waste Activity.
4. In 9 VAC 20-60-263 B 1, a requirement is made that transportation of hazardous waste must comply with Part VII of the regulations. Part VII contains some provisions that are more stringent and broader in scope than the federal requirements of 40 CFR 263. The more stringent items are 9 VAC 20-60-440 C requires that identification numbers be placed on correspondence and spill documents, 9 VAC 20-60-480 G 2 does not allow the generator to designate an alternate facility on the manifest and requires the manifest to be revised instead, and 9 VAC 20-60-490 C and D require additional parties be notified in the case of a discharge.
5. In 9 VAC 20-60-264 B 4 and 9 VAC 20-60-265 B 5, facilities are required to maintain records of tests and inspections of equipment required by 40 CFR 264.33 and 40 CFR 265.33.
6. In 9 VAC 20-60-264 B 5, 9 VAC 20-60-265 B 6 and 9 VAC 20-60-264 B 15 d, facilities are required to make a notice of imminent or actual emergency to both the on-scene coordinator and the National Emergency Response Center, as opposed to choosing between the two as set out in 40 CFR 264.56(d)(2) and 40 CFR 265.56(d)(2). Further, the facilities are required to file the notice with the Commonwealth Emergency Response Team and to include other information required by the Director in the incident report made as required by 40 CFR 264.56(j) and 40 CFR 265.56(j). In 9 VAC-20-60-262 B 6, generators are required to designate all subsequent transporters.

7. In 9 VAC 20-60-264 B 11, the requirements of 40 CFR 264.196(d) are expanded to require that reports on leaks and spills from tanks also be sent to the local government with jurisdiction. Also, the requirements are expanded since reporting under Superfund procedures of 40 CFR 302 does not relieve the facility from the requirement to report under In 40 CFR 264.196.

8 In 9 VAC 20-60-264 B 14, 9 VAC 20-60-265 B 17, and 9 VAC 20-60-270 B 4, underground injection of hazardous waste is prohibited. From the beginning of the hazardous waste program in Virginia, it has been determined that suitable geology for underground injection facilities does not exist in the Commonwealth.

9. In 9 VAC 20-60-264 B 15 a, notices set out in 40 CFR 264.12(a) are required to be sent to the Director and to the Administrator.

10. In 9 VAC 20-60-265 B 3, notices set out in 40 CFR 265.12(a) are required to be sent to the Director and to local governments.

11. 9 VAC 20-60-265 B 7, in addition to the requirements of 40 CFR 265.91, requires that a log must be made of each groundwater monitoring well describing the soils or rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered, and a copy of the logs with appropriate maps must be sent to the Department.

12. In 9 VAC 20-60-265 B 15, in addition to the requirements of 40 CFR 265.310, the owner or operator must consider the following factors in addressing the closure and post-closure care objectives:

- a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;
- b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;
- c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;
- d. Climate, including amount, frequency and pH of precipitation;
- e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and
- f. Geological and soil profiles and surface and subsurface hydrology of the site.

13. In 9 VAC 20-60-265 B 16, in addition to the requirements of 40 CFR 265.116, during the post-closure care period, the owner or operator of a hazardous waste landfill must comply with the following items:

- a. Maintain the function and integrity of the final cover as specified in the approved closure plan;
- b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;
- c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;
- d. Protect and maintain, if present, surveyed benchmarks; and
- e. Restrict access to the landfill as appropriate for its post-closure use.

14. At 9 VAC 20-60-265 B 18, regulated units at interim status facilities are defined and required to comply with the indicated standards for closure and post-closure care applicable under federal regulations to permitted facilities (40 CFR 264). Some of these provisions are more stringent than would have been required for interim status facilities under federal requirements. The following items contain those provisions that are different from the federal requirements and may be more stringent or contain more stringent elements:

a. Regulated units of the facility are defined as those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills that received hazardous waste after July 26, 1982.

b. In addition to the requirements of Subpart G of 40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units must comply with the closure and post-closure requirements contained in Subpart G, Subpart H, and Subpart K through Subpart N of 40 CFR Part 264, as applicable, and must comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended groundwater monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265.

c. For owners or operators of surface impoundments or waste piles included above who intend to remove all hazardous wastes at closure in accordance with 40 CFR 264.228(a)(1) or 40 CFR 264.258(a), as applicable, submittal of contingent closure and contingent post-closure plans is not required. However, if the facility is subsequently required to close as a landfill in accordance with Subpart N of 40 CFR Part 264, a modified closure plan shall be submitted no more than 30 days after that determination is made, and these plans are processed as closure plan amendments. For such facilities, the corresponding post-closure plan must be submitted within 90 days of the determination that the unit must be closed as a landfill.

d. A permit application to address the post-closure care requirements of 40 CFR 264.117 and for groundwater monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, must be submitted for all regulated units which fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable. The permit application must be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application must address the post-closure care maintenance of both the final cover and the groundwater monitoring wells as well as the implementation of the applicable groundwater monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet groundwater contamination remains, the permit application must address the post-closure care maintenance of the groundwater monitoring wells as well as the implementation of the applicable groundwater monitoring program.

e. In addition to the requirements of 40 CFR 264.112(d)(2)(i) for requesting an extension to the one-year limit, the owner or operator must demonstrate that he will continue to take all steps to prevent threats to human health and the environment. In addition to the requirements of 40 CFR 264.119(c), the owner or operator must also request a modification to the post-closure permit if he wishes to remove contaminated structures and equipment.

15. At 9 VAC 20-60-266 B 1 through 3, those materials that are used in a manner constituting disposal or are recyclable materials that are precious metals or lead acid batteries are subject to Virginia regulations in Parts IV, VII and XII for notice of activity, transportation requirements and permit fee requirements. These Commonwealth requirements are in addition to requirements of 40 CFR 266, and some of these requirements are more stringent or broader in scope.

16. At 9 VAC 20-60-273 B 3, universal waste handlers are required to give a notice of activity similar to that of a generator or facility. Further, if they will transport the waste, they are subject to the rules for transporters, including a requirement to have a permit.

17. In Part XI, a permitting process and application requirements contain all the elements of 40 CFR 124 and 40 CFR 270 that are required by 40 CFR 271.14, which were also incorporated in 9 VAC 20-60-270 and 9 VAC 20-60-124. In Part XI, more extensive information is required in the application than in the federal regulations. Also, nine types of permit modification (waste pile management practices and substitution of non-hazardous waste fuel, for example) are considered to be more extensive modifications than the federal text requires (the Demonstration of Adequate Authority discusses these provisions in greater detail).

18. The regulations do not provide for the extension of the submission date for a Part A permit in the event of confusion caused by the federal regulatory process, which is described in 40 CFR 270.10(e)(2).

19. At 9 VAC 20-60-1060 L 1, written notices are required, while the specific manner of communication is not specified in the federal requirements.

20. At 9 VAC 20-60-1060 L 2 a, requires that the professional engineer be certified for practice in Virginia, which is not required by the federal regulations.

21. Sections 9 VAC 20-60-1170 B 4 and 9 VAC 20-60-1170 C 4 are more stringent than analogous federal rules. Notice before a hearing must be given for 30 days in Virginia compared with the federal requirement for 15 days. The regulated community has a shorter time, 15 days, to schedule a hearing than the 30 days allowed by the federal rule.

22. Sections 9 VAC 20-60-1170 C 7 is more stringent than analogous federal rule at 40 CFR 125.15 because the Director has 10 days to notify the persons on the facility mailing list, appropriate units and the local government of a decision on a major modification permitting; whereas, the federal rule only requires notice to commenters and people submitting written requests.

23. Section 9 VAC 20-60-1200 C 1 b requires the Director to give notice (by mail) of draft permits and comment periods to all other agencies who issue or have issued a permit for the same facility or have authority over construction or operation of the same facility. 9 VAC 20-60-1200 E requires similar distribution of fact sheets. Both provisions are more stringent than USEPA general notification requirements.

24. In Part XIV, a series of petitions and processes for making those petitions are described in a manner analogous to those in 40 CFR 260. The Commonwealth has chosen not to list or de-list solid waste as hazardous waste in a petition process and is not seeking authorization for this program element. During periodic rulemaking, it may consider request for such an action if it is submitted during the comment period and it will consider incorporation of any actions by USEPA in response to such petitions. It may consider requests for variance from regulations when those variances are consistent with a listing action taken by USEPA in response to a petition; however, it does not expect variance actions to be frequent. The additional time following the granting of a petition by USEPA and the incorporation or variance implementing the action in the Commonwealth may be construed as a more stringent process.

25. In Part XIV, a series of petitions and processes for making those petitions are described in a manner analogous to those in 40 CFR 260. The Commonwealth has chosen not to accept petitions for equivalent testing or analytical methods. During periodic rulemaking, it may consider request for such an action if it is submitted during the comment period and it will consider incorporation of any actions by USEPA in response to such petitions. It may consider requests for variance from regulations when those variances are consistent with a listing action taken by USEPA in response to a petition; however, it does not expect variance actions to be frequent. The additional time

following the granting of a petition by USEPA and the incorporation or variance implementing the action in the Commonwealth may be construed as more a more stringent process.

26. Part XIV, a series of petitions and processes for making those petitions are described in a manner analogous to those in 40 CFR 260. The Commonwealth has chosen not to directly accept petitions to exclude certain recycled wastes that are hazardous waste from being a solid waste, and is not seeking authorization for this program element. The regulations refer petitions for such an action to the Administrator. If the Administrator acts on the petition (many petitions would have an impact on states other than Virginia), the Commonwealth will consider a rulemaking or a variance action to provide the same effect under the Commonwealth's regulations. If the Administrator forwards a petition to the Department and indicates that USEPA will not act on the petition, the Commonwealth will then consider the petition. If the Director finds the proposed action is appropriate, he may proceed under Commonwealth regulations to rulemaking or issuance of a variance under the Solid Waste Management Regulations (9 VAC 20-80-10, et seq.). The additional time for resolving the petition in the Commonwealth may be construed as a more stringent process. When criteria and process regulations are incorporated into the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10, et seq.), the Commonwealth will seek authorization for this program element. The Commonwealth expects that the future incorporation would be equivalent and not more stringent regarding this program element.

27. Section 9 VAC 20-60-1420 B 2 requires the Director to publish final decisions on a variance in a local newspaper, whereas, the federal requirement is not specific.

28. Section 9 VAC 20-60-1420 C 1 a empowers the Director to require compliance by generators with 40 CFR 262, Subpart B (manifests) which is not a power of the USEPA Administrator.

Areas where Virginia regulations are broader in scope include the following.

In Part VII (transporters) Part XI (facilities), a permit and permit application fee are required. Part XII establishes a permit and permit modification fee system applicable to transporters and all facility owners and operators. The requirements of a transporter permit and the requirements of fees for permits or permit amendments are not a part of the federal requirements and are therefore broader in scope. To the degree the Commonwealth places the full burden of these requirements on transporters regarding shipments of spent acid-lead batteries destined for recovery, Virginia is broader in scope than federal requirements, which exempt these materials at 40 CFR 266.80.

Areas where Virginia regulations are different but equivalent include the following items.

All the areas of departure from the federal program by the Commonwealth are areas where the Commonwealth is more stringent or broader in scope than the federal programs. There are many differences in the programs where the phrasing of a particular requirement or an effective date is not the same. These are explained in the Demonstration of Adequate Authority in appropriate detail and need not be discussed individually here. In all cases of date differences, they result from the structuring of federal statutes and their handling of statutory requirements at different times based on state or federal implementation. Phrasing differences are inconsequential either because they are of a trivial nature or because the effect of the federal and Commonwealth provisions are the same. In all cases, the differences result in the Commonwealth being equivalent, more stringent or broader in scope than the federal program.

The Commonwealth's program is based on the federal program as it existed on September 19, 1994, with the inclusion of the Universal Waste Rule as finalized by USEPA on May 11, 1995. It is the Commonwealth's intent to amend its program in Amendment 15 to coincide with the federal program through June 30, 1999. Each year thereafter,



as the Commonwealth determines that all federal rules to be finalized by June 30 of that year have become final, it will initiate rulemaking to update the Commonwealth's regulations and program to incorporate those changes. The rulemaking process in the Commonwealth will require time that will mean that the Commonwealth final annual regulations are a few months behind the federal final annual regulation. This lag time should normally be less than nine months; however, when amendments to Commonwealth regulation represent a substantial change in the text of the Commonwealth's regulations, this lag period may approach eighteen months to allow more extensive public participation in accordance with Virginia's Administrative Process Act, Va. Code § 9-6.14.1:1, *et seq.*

## **B. A DISCUSSION OF EACH ONE OF THE SIX STATUTORY TESTS (RCRA STANDARDS 1 THROUGH 6).**

### *RCRA STANDARDS #1 AND #2 - EQUIVALENT AND NO LESS STRINGENT PROGRAM*

#### 1. Requirements for Identification and Listing - § 271.9

The universe of wastes controlled by the Commonwealth includes all the hazardous wastes controlled by the federal program. This universe is defined by the Commonwealth's incorporation of the federal text by reference in 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-273, and 9 VAC 20-60-279. By statute, Va. Code §10.1-1402 (8), the designation of classes, types or lists of hazardous waste must be in accordance with the criteria and listings identified under federal statute or regulation. Therefore, the Commonwealth has not included on its lists any wastes that are not identified by EPA as hazardous, nor did it alter or add to the characteristics shown in Part 261.

#### 2. Requirements for Generators - § 271.10

The Commonwealth controls all the generators that are controlled by the federal program, including small quantity generators as required under HSWA Cluster I. Section 9 VAC 20-60-315 requires new generators to notify the Director of their activities; requires generators to get an EPA identification number from the Administrator (using EPA Form 8700-12); requires all generators to follow reporting and record-keeping requirements contained in 40 CFR 262.40, 262.42, and 262.43; requires generators to submit annual activity reports that contain all the information requirements shown in 40 CFR 262.41; requires generators to package, label, mark and placard hazardous waste during transportation in accordance with parts of Title 49, Code of Federal Regulations; and provides requirements respecting international shipments which mirror those contained in 40 CFR 262.50 through 40 CFR 262.58 and 40 CFR 262.60 as promulgated by EPA on August 8, 1986.

The Commonwealth's manifest system follows that of EPA, including the use of exception and discrepancy reports. Virginia has not chosen to require its own manifest form, nor had it set up a manifest-matching program. Amendment 8 required the use of the Uniform Manifest as provided by joint EPA/DOT rule promulgated on October 1, 1986. Amendment 10 established the requirement for including a notice of reporting burden. Virginia's manifest system is marginally more stringent than the federal system. It does not provide for the designation of an alternate TSD facility and requires the transporters to return all shipments that cannot be delivered to the original TSD to the generator. Changes in the sections pertaining to accumulation of hazardous wastes were made in Amendment 12.

These items are accomplished by incorporation of federal text into the Commonwealth's regulations at 9 VAC 20-60-262 and the establishment of specific notice requirements in 9 VAC 20-60-305 through 9 VAC 20-60-325. With

the exception of the Commonwealth's more stringent requirements previously discussed, generators in the Commonwealth must comply with the federal requirements.

### 3. Requirements for Transporters - § 271.11

The Commonwealth controls all the transporters that are covered by the federal regulations under 40 CFR 263, including the changes made to § 263.12 contained in HSWA Cluster 1. Under a separate legislative mandate (Va. Code 10.1-1450), the Department and law enforcement agencies regulate both interstate and intrastate transporters of hazardous materials as defined under Title 49, Code of Federal Regulations. Additionally, the Commonwealth has adopted the federal text of 40 CFR 263 by reference at 9 VAC-20-60-263 and included more stringent and broader in scope requirements at 9 VAC 20-60-420 through 9 VAC 20-60-500.

### 4. Requirements for Facilities - § 271.12

Virginia regulations prohibit underground injection of hazardous wastes. Except for more stringent provisions previously listed, all other technical standards for the hazardous waste management facilities are identical to the federal standards. The text of 40 CFR 264 is incorporated by reference at 9 VAC 20-60-264. The text of 40 CFR 265 is incorporated by reference at 9 VAC 20-60-265.

### 5. Requirements for Permitting - §§ 271.13 and 14

The universe of facilities requiring Virginia permits is the same as that under the federal RCRA program. Further, Virginia regulations provide for the "interim status" standards which are at least as stringent as those contained in 40 CFR 265, as previously noted in this document.

In 9 VAC 20-60-124 and 9 VAC 20-60-270, the Commonwealth incorporates most of the federal text of 40 CFR 124 and 40 CFR 270. The Virginia permitting regulations contained in Part XI combine the requirements of both 40 CFR Parts 270 and 124 that are pertinent to state programs and provides them in a contiguous presentation. The formatting of Part XI is different from that of the federal regulations. The Virginia permitting regulations are more stringent in two areas: they prohibit underground injection of hazardous wastes, and they omit provisions for the confidentiality of information. The omission is predicated on the provisions of the Virginia Freedom of Information Act (VFOIA), Chapter 21, Title 2.1, Code of Virginia. VFOIA does not specifically exempt information that is submitted under the Virginia Waste Management Act. The Department had adopted all HSWA and non-HSWA permitting requirements promulgated by EPA up to September 19, 1994.

### 6. Variance, Waiver and Compliance Schedule Provisions

Variance, waiver and compliance schedule provisions are similar to the federal requirements in that Virginia allows few exceptions. Virginia will not consider petitions regarding classification of materials as solid waste or delisting of hazardous wastes, preferring that this function remain with USEPA. The regulations refer such petitions to the Administrator or Regional Administrator. Virginia will propose that USEPA decisions on the petitions be incorporated into its regulations during the next amendment of those regulations. Virginia will also propose recognizing EPA final delistings through the variance process pending the next rulemaking opportunity. The Department does not have the appropriate resources to properly evaluate these petitions, and it feels that, in most cases, these decisions may effect a regional or national precedent. Permits issued by Virginia under Part XI (similar to 40 CFR 270.33) may specify compliance schedules when necessary.



## 7. Availability of Information (§ 3006(f)).

Compliance with the EPA requirements for freedom of information requests is established through statutory language. The Virginia Freedom of Information Act does satisfy all those principles that EPA requires to be provided for in statute or regulation. Specifically, these are the scope of records subject to information requests, time to respond to request, judicial review mechanism, and attorneys' fees and expenses. The remainder of EPA's "Procedural Requirements" are satisfied by actual practices of the Department's employees, EPA and the Commonwealth.

Under the Virginia FOIA, the same types of records are available to the public from the Department as would be available from EPA. All the records listed by EPA are considered official records under the Virginia FOIA and are open to the public. The Virginia Waste Management Act and regulations do not provide for the confidentiality of business information. This satisfies the substantive requirements of HSWA.

## *RCRA STANDARD #3 - CONSISTENT PROGRAM*

Virginia's hazardous waste management program is fully consistent with the federal RCRA program and those of other authorized states. The few areas in which the Commonwealth had adopted more stringent regulations do not provide for general prohibition on the treatment, storage or disposal, nor do they require a manifest system beyond that provided for in the federal regulations.

### 1. Interstate Movement of Wastes - § 271.4(a)

There are no statutory, regulatory, or policy-related requirements in Virginia that ban the importation of hazardous wastes from other States. In fact, annual reports show that Virginia imports almost as much waste as it exports. Additionally, there are no reciprocal agreements with other states that might affect movement of wastes. The 1982 General Assembly enacted an interstate compact to provide for establishment and operation of regional disposal facility solely for low-level radioactive waste (Chapter 15, Title 10.1, Code of Virginia (1950), as amended). No such compacts have been entered into for disposal of hazardous wastes.

### 2. Prohibition of Treatment, Storage, or Disposal - § 271.4(b)

Commonwealth regulations prohibit disposal of hazardous wastes by underground injection. The Water Resources Policy adopted by the Virginia Water Control Board on May 17, 1974, as Policy 3.4-5, furnishes the basis for the prohibition. Protection of human health and the environment was the reason for the adoption of the policy.

The 1984 session of the General Assembly enacted the Virginia Hazardous Waste Facilities Siting Act (Chapter 17.1, Title 10, Code of Virginia). In 1986 that Act was amended and recodified as Chapter 14, Article 6, Title 10.1, Code of Virginia (§§ 10.1-1433, et seq.). The Virginia Hazardous Waste Facility Siting Council adopted in 1985 the regulations implementing the legislation. Under the provisions of the Virginia Waste Management Act, these regulations will remain in force and effect until they are amended, changed, or repealed by the Virginia Waste Management Board. Neither the legislation nor implementing regulations contradicts the provisions of 40 CFR 271.4. In fact, neither address economics of the site development except as it may affect the compensation of the local governments and the affected citizens.

### 3. Manifest System - § 271.4(c)

As required by Part V of the Commonwealth's regulations, the Virginia manifest system is identical to that of USEPA. Amendment 8 required the use of the federal Uniform Manifest Form. The Commonwealth does not intend to adopt a matching system for the copies, nor does it require generators to send more detailed information to the TSD facility before the latter may receive the waste.

#### *RCRA STANDARD #4 - MORE STRINGENT PROGRAM*

The Virginia program for generators and owners and operators of TSD facilities is only marginally more stringent than that required by the EPA. Previous discussions touched upon these areas and need not be repeated here.

The Virginia regulatory program for transporters of hazardous waste is more extensive than required for authorization. Commonwealth regulations provide that transporters must obtain a permit from the Commonwealth. Previously, transporters were also required to furnish an annual report of their activities. This latter requirement was removed in Amendment 14.

In 1992, the General Assembly amended the Virginia Waste Management Act to empower the Director to revoke, suspend or amend any permit if the owner's or operator's key personnel have been convicted of any of a list of felonies (under the laws of Commonwealth or the equivalent laws of any other jurisdiction), or they have been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws (of the United States, the Commonwealth or any other state). In order to be able to do this, the Director must determine that such conviction or adjudication is sufficiently probative of the permittee's or applicant's inability or unwillingness to operate a facility in a lawful manner.

#### *RCRA STANDARD #5 - ADEQUATE ENFORCEMENT*

Section 10.1-1402(11), Code of Virginia, provides in part that Virginia Waste Management Board is authorized to enforce its regulations as may be necessary to carry out its powers and duties and the intent of the Virginia Waste Management Act and the federal acts. Section 10.1-1405B vests the Director of the Department with all the authority of the Board when the latter body is not in session, except for the promulgation of final regulations. The statutory basis and procedures for the enforcement are restated in 9 VAC 20-60-80. Amendments 8 and 9 have updated the legal basis by including proper citations to the new Act. At its 1990 session, the General Assembly amended Article 8 of the Virginia Waste Management Act to increase the civil penalties associated with the mismanagement of hazardous wastes from \$10,000 to \$25,000 and to increase the criminal penalties to confinement in a state correctional facility for not less than one year nor more than five years and a fine of not more than \$25,000 for each violation. Each day of violation of each requirement is a separate offense. Article 8 was also amended to include the "knowing endangerment" clause equivalent to RCRA § 3008(e). The 1998 General Assembly added a provision at § 10.1-1455.G. stating that, in addition to all other remedies, the Board may issue special orders and emergency special orders to resolve the violation of any law or regulation administered by the Board, to enforce any of condition of a permit or certificate, or to enforce any case decision or order of the Board. The 1999 General Assembly increased the powers of the Board related to the issuing of special orders (renamed "administrative orders" and "emergency administrative orders") by including penalties of up to \$25,000 per violation and the power to compel the taking of corrective actions or the cessation of any activity upon which the order is based. The 1999 General Assembly added new authority to issue unilateral orders with monetary penalties.

### 1. Notices and Reports - § 271.15(a)

Sections 10.1-1402(6) and (7), Code of Virginia (1950), as amended, specify that the Department is authorized to collect data and information as necessary to conduct the state hazardous waste program and to require any person who generates, collects, transports, stores, or provides treatment or disposal of a hazardous waste to maintain such records, manifests or reporting and record-keeping as may be required pursuant to federal statute or regulation. Based on this statutory authorization, the Virginia Hazardous Waste Management Regulations require in all cases at least the same level of reporting and record keeping as the federal regulations.

### 2. Inspection and Compliance assurance - § 271.15(b)

In addition to the review of records and information, the Department operates a program of prioritized periodic inspections. Reinspection of handlers with unresolved non-compliance histories are placed in the highest priority. Inspection visits, record reviews and inspection of federal/state/local (FSL) treatment and storage facilities, FSL land-based facilities, and combustion facilities receive the next highest priority and are inspected at least annually. Compliance-assurance visits to other land-based, treatment and storage facilities are scheduled to occur within a biennial cycle. Semiannual visits are made to BIFs and incinerators. Visits to hazardous waste fuel handlers are scheduled for every three years. Visits to the other large quantity generators and transporters are scheduled at least once every three years. State personnel carry out all compliance-assurance visits. Personnel have received extensive training in addition to possessing scientific education, and they are required to perform complete and comprehensive surveys of the regulated activities.

Each State employee receives at least three months on-the-job training before he or she is expected to do independent compliance-assurance work and attends training offered by the EPA, to the extent possible. All employees receive in-house refresher training annually. This approach to the achievement and maintenance of professional competence was found to be effective in carrying out the requirements of the program. To ensure that all the program requirements have been met, detailed inspection records are compiled, which are designed to indicate the degree of compliance with each requirement contained in the regulations or condition of the permit. Preparation for the inspection includes review of records received by the Department prior to the visit and to the documents kept at the facility. When necessary, copies of the latter documents are brought back to the office for further evaluation. Adequacy of sampling and monitoring performed by the regulated facility is one of the items evaluated by the inspectors.

To insure consistency of the regional offices in meeting their goals, inspection reports are continuously monitored and compared to goals to which the Department committed in the annual workplan. The central coordinating staff works with the regional staff to insure completion of goals, consistency, quality of compliance-assurance inspections and maintenance of a high level of inspector training. In 1999 the Department adopted use of USEPA Inspection Manual inspection forms, supplemented by a similar checklist form for requirements where the Commonwealth regulations are more stringent than the federal regulations.

### 3. Inspection Authority - § 271.15(c)

Section 10.1-1456, Code of Virginia, provides authority to the Director or his designee to enter, at any reasonable time, onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing in order to determine compliance with any law, regulation, order, or condition of a permit. Should the inspector be denied entry, he may apply to an appropriate Circuit Court for an inspection warrant. Section 19.2-393, et seq., Code of Virginia, provide conditions for issuance, duration, conduct of inspection and penalties for refusal to permit auth-

orized inspection. Compliance-assurance inspections of transportation conveyances or vehicles engaged in transportation of hazardous wastes may be performed by both the Department personnel, by officers of the Department of State Police, and by all law-enforcement and peace officers of the Commonwealth with appropriate training in hazardous materials transportation. Based on the authority contained in Article 7, Chapter 14, Title 10.1, Code of Virginia, such officers are charged with the enforcement of the Virginia Regulations Governing Transportation of Hazardous Materials. The Department of State Police is authorized to stop motor vehicles in transit, to perform inspections of motor vehicles in operation and to mark vehicles "out-of-service" as set forth in 49 CFR 396.9.

#### 4. Chain of Custody - § 271.15(d)

Personnel engaged in the inspections associated with possible compliance and enforcement through civil proceedings have been trained in various short courses sponsored by the Department, EPA, or other agencies. Any samples taken are properly identified, sealed, and maintained at all times in a secured (locked) container in the custody of the sample taker until delivered to the analytical laboratory. The Commonwealth uses contract laboratories to analyze any samples taken.

#### 5. Remedies for Violations - §§ 271.16(a) and (b) [Note: also see Enforcement Manual, Attachment 6]

Section 10.1-1402(18), Code of Virginia, provides that the Waste Management Board or the Director (§ 10.1-1405B) may issue orders to meet any emergency for the purpose of suppressing dangerous nuisances. Should no emergency exist, § 10.1-1455C authorizes issuance of orders to require any person to comply with any law or regulations promulgated by the Board or to comply with any case decision as defined in § 9-6.14:4, Virginia Administrative Process Act. Non-emergency orders can be issued only after a hearing that is preceded by a 30-day notice to the affected person. The 1998 General Assembly added a provision at § 10.1-1455.G. that, in addition to all other remedies, the Board, as a case decision, may issue special orders and emergency special orders for the violation of any law or regulation administered by the Board, any of its condition of a permit or certificate, any case decision or order of the Board. The 1999 General Assembly increased the powers of the Board related to the issuing of special orders (renamed "administrative orders" and "emergency administrative orders") by including penalties of up to \$25,000 per violation and the power to compel the taking of corrective actions or the cessation of any activity upon which the order is based. The 1999 General Assembly also added new authority to issue unilateral orders with monetary penalties. Emergency orders can be issued without a hearing after due notice or attempt to notify, provided there is an opportunity for a hearing after the fact. In addition, the Attorney General, acting on behalf of the Board or the Director, may institute proceedings in an appropriate court against any person violating, failing or refusing to obey any lawful regulation or order to compel to obey and to comply by injunction, mandamus, or other appropriate remedy (§ 10.1-1455A). As discussed in the Demonstration of Adequate Authority, the ability to enjoin applies to any threatened or continued violation of any lawful regulation. Neither § 10.1-1455A nor § 10.1-1427 (dealing with permit revocation) provides for any necessity of a prior revocation of the permit, since the former section imposes no condition precedent upon the Director's ability to seek injunctive relief.

Section 10.1-1455A provides civil penalties; to wit, any person who violates any provision of the Virginia Waste Management Act [the Act], any condition of a permit or certification, or any regulation or order of the Board may be assessed a civil penalty of not more than \$25,000 for each day of such violation. Section 10.1-1455E further allows a civil penalty which may be obtained of any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to the Act of up to \$25,000 for each violation, each day of violation of each requirement constituting a separate offense.

Section 10.1-1455D provides criminal penalties; to wit, any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or the Director, any condition of a permit or certification or any provision of the Act may be convicted of committing a Class 1 misdemeanor and may be compelled to obey such regulation, permit, certification, order or provision of the Act and to comply therewith by injunction, mandamus, or other appropriate remedy. Section 10.1-1455B provides additional criminal penalties for 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 any false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance. They are guilty of a felony punishable by a term of imprisonment 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. Each day of violation of each requirement constitutes a separate offense. Section 10.1-1455I further provides that any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of the Act or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, may be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual convicted of violating the Act, may be subject to a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty is doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

Section 10.1-1455C allows the Board 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 of the Board or Director. An older section, § 10.1-1455F, provides that, with the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or the Director, any condition of a permit or any provision of the Act, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in § 10.1-1455. Such civil charges would be instead of any appropriate civil penalty, which could be imposed under the Act. The more recently added provision, § 10.1-1455G, goes further and provides that, in addition to all other available remedies, the Board may issue administrative orders for the violation of (i) any law or regulation administered by the Board; (ii) any condition of a permit or certificate issued pursuant to the Act; or (iii) any case decision or order of the Board. Orders issued may include penalties of up to \$25,000 per violation and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. Orders become effective five days after having been delivered to the affected persons or mailed by certified mail to the last known address of such persons. Should the Board find that any person is adversely affecting the public health, safety or welfare, or the environment, the Board may, after a reasonable attempt to give notice, issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and must 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 emergency administrative order.

Under § 10.1-1455K the Board is entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under the Virginia Waste Management Act in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust. The burden of proof in civil cases is

the normal civil requirement of a preponderance of evidence. In the criminal cases, the burden of proof is beyond a reasonable doubt.

6. Appropriateness of Penalties - § 271.16(c)

In accordance with 40 CFR 271.16(c), a civil penalty assessed, sought or agreed upon by the Director shall be appropriate. The method for calculating penalties is set out in the Department of Environmental Quality Enforcement Manual, which is attached (Attachment 6).

7. Public Participation - § 271.16(d)

The VHWMR at 9 VAC 20-60-70 provide for public participation in the enforcement process in a manner equivalent to that contained in 40 CFR 271.16(d)(2). Provisions of the Commonwealth of Virginia Administrative Process Act (§9-6.14:1, et seq., of the Code of Virginia) and the Virginia Waste Management Board Public Participation Guidelines, 9 VAC 20-10-10, et seq., provide procedural standards for public participation. In general, complaints received by the Department from the citizens have been promptly and appropriately investigated.

*RCRA STANDARD #6 - NOTICE AND HEARING IN THE PERMIT PROCESS*

This standard is based on § 7004(b)(2) of RCRA which stipulates that no State permit program may be authorized unless it: (1) provides notice of its intent to issue a permit through publication in "major local newspapers of general circulation"; (2) broadcasts such notice over local radio stations; (3) provides for at least a 45 day public comment period; and (5) holds an informal public hearing if one is requested during the comment period.

In Virginia, once an application has been determined to be technically complete, the Director will tentatively decide whether to prepare a draft permit or to deny the application, which is a type of a draft permit. Other types of draft permits include modifications, revocation and re-issuance, and notices of intent to terminate. The requirements for the contents of the draft permit are contained in 9 VAC 20-60-1180 of the Virginia Hazardous Waste Management Regulations.

Once a draft permit or the notice of intent to deny a permit has been prepared, the Director will give public notice providing for the opportunity to comment and to request a hearing. The notice will allow at least 45 days for comments and requests. The timing, the methods and contents of the notice are specified in 9 VAC 20-60-1200.

During the public comment period, any interested person may submit written comments on the draft permit and may request a hearing in writing (9 VAC 20-60-1210). The Director will hold a public hearing either upon receiving a request or upon his own discretion in the absence of such a request, to receive written or oral comments which may clarify issues involved in permit decisions (9 VAC 20-60-1220).

All persons contesting the permit or permit conditions have an opportunity to raise issues and provide information during the public comment period (9 VAC 20-60-1230). Based on the merits of the application and the results of the public participation, the Director will render the final permit decision. At that time he will issue a response to the comments received which will be made available to the public (9 VAC 20-60-1240).

The mechanism for the appeal of a decision on the issuance or denial of permits is addressed in the Virginia Administrative Process Act (VAPA) in the Article dealing with the case decisions (Article 3, Chapter 1.1:1, Title 9, Code of Virginia (1950), as amended). Section 9-6.14:11 of VAPA provides for informal fact finding proceedings before the Director, or his agent, in cases which parties fail to consent. These proceedings provide for the right of the parties to have reasonable notice, to appear in person or by counsel, to have notice of any contrary fact basis or information, to receive prompt decisions and to be informed of the factual or procedural basis for an adverse decision.

The Department is enabled to first attempt to resolve controversies by consent. Should such consent not be achieved, § 9-6.14:12, VAPA, provides for the opportunity for the formal taking of evidence upon relevant fact issues. Decisions or recommended decisions and findings of fact arising from such a formal hearing become a part of the record. In support of its fact finding procedures, the Department may issue subpoenas requiring testimony or the production of evidence subject to certain rights specified in § 9-6.14:13, VAPA.

The final permit decision will be furnished to the applicants and, together with the full record or case file, will be made available for public inspection or copying subject to certain exceptions specified in § 9-6.14:14, VAPA. Any party aggrieved by and claiming unlawfulness of the permit decision has a right to the direct court review. The conditions and the mechanisms for such review are specified in § 9-6.14:15, et seq., VAPA.

The procedures under Virginia statutes more than adequately provide for the notice and hearing intentions of the EPA in the permit process. The above-stated procedure provides a greater input opportunity for the public during the permit process than the minimal required by the EPA under Standard #6.



## General Correspondence Between Virginia Regulations And Federal Regulations

USEPA REGULATION Code of Federal Regulations (CFR)	VIRGINIA REGULATION	DESCRIPTION
PART 260	9 VAC 20-60-260	Hazardous Waste Management System: General
PART 261	9 VAC 20-60-261	Identification and Listing of Hazardous Waste
PART 262	9 VAC 20-60-262 Part IV	Standards Applicable to Generators of Hazardous Waste
PART 263	9 VAC 20-60-263 Part VII	Standards Applicable to Transporters of Hazardous Waste
PART 264	9 VAC 20-60-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
PART 265	9 VAC 20-60-265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
PART 266	9 VAC 20-60-266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
PART 268	9 VAC 20-60-268	Land Disposal Restrictions
PARTS 270/124	9 VAC 20-60-124 9 VAC 20-60-270 Part XI and Part XIV	The Hazardous Waste Permit Program
PART 273	9 VAC 20-60-273 Part XVI	Standards for Universal Waste Management
PART 279	9 VAC 20-60-279	Standards for the Management of Used Oil



### SECTION 3. STATE AGENCY RESPONSIBILITIES

#### A ORGANIZATION AND STRUCTURE OF THE HAZARDOUS WASTE PROGRAM

##### 1. Identification of Virginia Agency Administering Program-

Based on the legislative authority contained in Chapter 11.1, Title 10.1, Code of Virginia (1950), as amended, the Department of Environmental Quality has the sole responsibility for the administration of laws and regulations concerning hazardous wastes. To eliminate possible duplication of effort by various other agencies of the Commonwealth and to best use resources, the Department coordinates its actions with other agencies/divisions and may receive such assistance that may be made available by these agencies within their special areas of competence.

Close cooperation exists between the Division of Waste Program Coordination and the Division of Water Program Coordination, and the regional offices, in the areas of potential surface and ground water pollution. Similar close cooperation exists with the Division of Air Program Coordination and the regional air components in the case of facilities performing incineration, thermal treatment or any other potential release of constituents to the atmosphere, and with the Department of State Police in the area of transportation of hazardous materials and wastes.

Owing to significant budgetary and other resource constraints, the Division of Consolidated Laboratory Services of the Department of General Services had been unable to support the Department in routine hazardous waste sample analysis in the past. Analyses of forensic samples associated with criminal enforcement continue to be performed by the newly created Department of Criminal Justice Services. The Department has entered into contractual agreements with private laboratories for the laboratory support of its compliance-assurance-sampling program. These laboratories have EPA-approved quality assurance/quality control (QA/QC) programs in place.

The organizational charts for the executive branch of the government of the Commonwealth are shown in Appendix I.

##### 2. Structure Virginia Department of Environmental Quality - § 270.6(b)(1):

The Department of Environmental Quality (organization chart shown in Appendix I) is comprised of seven divisions and six regional offices. All agency programs are organized under one of the thirteen branches except for the Office of Enforcement Coordination, the Chief Deputy and the Internal Auditor. Hazardous waste enforcement is a function of the Office of Enforcement Coordination and the enforcement staff in the regional offices. The Pollution Prevention Program is located in the Division of Pollution Prevention and Compliance assistance. Inspections and enforcement staff are located in regional offices. All other hazardous waste program elements are within the Division of Waste Program Coordination.

Compliance inspectors and their supervisors are located in and under the administrative control of the six regional offices; however, program control for hazardous waste inspections and compliance activities are under the Division of Waste Program Coordination. The Office of Waste Programs of the Division of Waste Program Coordination coordinates the training of the regional staff and supervises for quality and consistency of inspections and compliance activities. The Office of Waste Programs also provides technical support in toxicology, statistics, geotechnical sciences, transporter regulation, regulatory development, program tracking and reporting, and

maintenance of program authorization. The Office of Waste Permitting provides for the review and issuance of permits, oversight of corrective action cases, groundwater monitoring and sampling, and other permit-related functions.

Function	Location
Permitting and Closure	Office of Waste Permitting in Division of Waste Program Coordination
Corrective Action	Office of Waste Permitting in the Division of Waste Program Coordination
Compliance	Regional Offices - Compliance and Enforcement Sections Compliance Oversight/Support - Office of Waste Programs in Division of Waste Program Coordination
Groundwater Compliance	Office of Permit Management in Division of Waste Program Coordination
Enforcement	Regional Office - Compliance and Enforcement Sections Enforcement Oversight/Support - Office of Enforcement Coordination
Regulations/ Authorization	Office of Waste Programs in the Division of Waste Program Coordination
RCRIS/BRS & Reporting	Office of Waste Programs in the Division of Waste Program Coordination
Mixed Waste	All staff with support provided by Office of Waste Programs in the Division of Waste Program Coordination
Waste Minimization	All Staff including Pollution Prevention staff in the Division of Pollution Prevention and Compliance Assistance

#### B. PROCEDURES FOR COORDINATION AMONG AGENCIES

The Department of Environmental Quality is the only state agency with direct responsibility for the program.

#### C. DESCRIPTION OF RELEVANT MEMORANDUMS OF UNDERSTANDING (MOUs) BETWEEN AGENCIES

No relevant MOUs regarding the program exist.

#### D. DIVISION OF RESPONSIBILITY BETWEEN COMMONWEALTH AND USEPA

The Department and USEPA have a Memorandum of Agreement setting out in detail the relationship between the parties. A new Memorandum of Agreement is being negotiated and completed as part of program authorization,

and this agreement will be amended as necessary to maintain an effective and cordial relationship between the parties. The USEPA will provide program oversight and support. The USEPA will also carry out its duties under RCRA and federal law with regard to non-delegable tasks and tasks not authorized to the Commonwealth. In particular, it will continue to review and manage petitions related to reclassifying solid wastes and delisting hazardous wastes.

The Commonwealth will provide compliance and enforcement functions consistent with the federal program and will review and issue permits (including the Corrective Action portions of permits) for hazardous waste management facilities. In general, the Commonwealth will conduct the normal tasks necessary to operate a hazardous waste regulatory program under state laws equivalent to federal RCRA regulations. From time to time the two agencies will enter into work sharing and joint projects. For example, it is anticipated that USEPA Region III staff will provide effort and expertise in the first few years of corrective action implementation under the state's lead through a work sharing agreement.

Certain federal authorities are not delegable to the state, and the USEPA will continue to conduct these program elements in accordance with federal rules and policies. The USEPA document, "Guidelines For State Adoption Of Federal RCRA Regulations By Reference Based On The July 1, 1998 CFR" summarizes these authorities:

#### **Imports/Exports**

Because of the Federal government's special role in matters of foreign policy, EPA does not delegate import/export functions. This promotes national coordination, uniformity and expeditious transmission of information between the United States and foreign countries. For a discussion of these issues, see 51 FR 28678, August 8, 1986. Currently, there are three major areas of the RCRA regulations that address imports and exports--Part 262 Subparts E, F and H.

**Part 262, Subpart E**--Most of the governmental functions covered under Part 262, Subparts E are not delegable to States. Note that although the governmental functions of Subpart E are nondelegable, in accordance with 40 CFR 271.10, the State program must include requirements respecting international shipments equivalent to those at Subpart E.

**Part 262, Subpart F**--This subpart addresses requirements for imports that are not modifiable by a state or delegable to a state.

**Part 262, Subpart H**--This subpart identifies wastes under RCRA, that are subject to a graduated system of procedural and substantive controls when they move across national borders within the Organization for Economic Cooperation and Development (OECD) for recovery. None of the provisions in Subpart H are delegable to States.

#### **Land Disposal Restrictions**

The following Part 268 sections are not delegable to States because of the national concerns which must be examined when decisions are made relative to them: 268.5 (case-by-case effective date extensions), 268.42(b) (application for alternate treatment method), and 268.44(a)-(g) (general treatment standard variances). Also, "No migration" petitions under 268.6 will be handled by EPA.

Note that the provision at 268.44 addresses two different variances. The provisions at 268.44(a)-(g) address the general treatment standard variances. The authority for such variances is not delegable because these variances could result in nationally applicable standards for a new waste treatability group. The provisions at 268.44(h)-(m), on the other hand, address site-specific variances. In the HWIR-Media proposed rule (61 FR 18828, April 29, 1996), EPA clarified that the authority to review and approve this second type of treatment variance can be delegated to States. For further information see the December 5, 1997 final rule (62 FR 64506).

#### SECTION 4. STAFFING AND FUNDING RESOURCES

##### A DESCRIPTION OF STAFFING OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

###### 1. Number of staff-

Table 1 shows the permanent positions allocated and the percentage of effort devoted to the implementation of the hazardous waste program.

TABLE 1. EFFORT IN PERSON-YEARS DEVOTED TO HAZARDOUS WASTE MANAGEMENT PROGRAM

POSITION	EFFORT IN PERSON-YEARS
DIRECTORS <sup>1</sup>	
DIRECTOR	0.10
PROGRAM DIRECTORS	0.20
DIVISION DIRECTOR, Waste Operations	0.20
REGIONAL DIRECTORS	0.60
PERMITTING/CLOSURE AND CORRECTIVE ACTION WORKSHARING	
ASST. DIVISION DIRECTOR	0.40
ENV. ENGINEER CONSULTANT	1.00
ENV. ENGINEER SENIOR	8.00
GROUNDWATER COMPLIANCE AND SUPPORT FOR PERMITTING/CORRECTIVE ACTION <sup>4</sup>	
ENV. ENGINEER CONSULTANT	0.40
ANALYTICAL CHEMIST SUPV.	2.00
COMPLIANCE AND ENFORCEMENT	
ASST. DIVISION DIRECTOR (regions)	1.00
ENV. ENGINEER CONSULTANT (regions)	1.00
ENFORCEMENT/COMPLIANCE SPECIALIST SENIORS (regions)	9.7
ENFORCEMENT/COMPLIANCE SPECIALISTS (regions)	0.50
ANALYTICAL CHEMIST SECTION CHIEF (regions)	0.45
ENFORCEMENT/COMPLIANCE SPECIALISTS SR. (regions)	1.00
ANALYTICAL CHEMIST SENIOR (regions)	0.80
PROGRAM DEVELOPMENT & SUPPORT	
ASST DIVISION DIRECTOR (central office)	0.15
ENV. ENGINEER CONSULTANT (central office)	1.00
ENV. PROGRAM PLANNER (central office)	0.15

<sup>1</sup>Directors are indirect support personnel, as are the fiscal, budget, and human resource personnel.

POSITION	EFFORT IN PERSON-YEARS
ENV. ENGINEER SENIOR (central office)	1.00
TOXICOLOGIST (central office)	0.40
ENV. PROGRAM ANALYST (Grant - central office)	1.20
OFFICE SERVICES SPCLST (Files - central office)	1.00
WASTE MINIMIZATION and ENVIRONMENTAL JUSTICE	
ENV. PROGRAM MANAGER	0.50
ENV. ENGINEER SENIOR	1.00
OTHER	
Legal services are available as needed for the Office of the Attorney General	NA

Not counted in the total is the staff support made available to the program by other divisions of the Department and other State agencies. They include:

- Departmental secretarial support
- Division of Administration, Department of Environmental Quality, furnishes fiscal, training, and human resources support.
- Division of Policy and Planning, Department of Environmental Quality, assists with support of environmental justice efforts.
- Division of Epidemiology, State Health Department, assists in evaluation of potential human exposures connected with illegal disposal, spills and contamination of ground and surface water. The Division provides medical input into the program.
- State Department of Emergency Services supports the program in providing emergency response to hazardous materials and hazardous waste incidents.
- Forensic laboratory support is obtained from the Department of Criminal Justice Services and the contract laboratories, if the former cannot support the analysis requirements. The Department has entered into contractual arrangements with three private laboratories to support its sampling and QA/QC program.

## 2. Occupations and general duties:

Some of the major staff duties and responsibilities are as follows:

### Directors

- |                               |   |   |
|-------------------------------|---|---|
| Director                      | - | Agency executive officer  |
| Program/Division<br>Directors | - | Provide overall support for the conduct<br>of the hazardous waste program.  |
| Regional Directors            | - | Provide leadership and responsibility for the hazardous waste enforcement and<br>compliance program in their particular region. |

### Permitting, Closure, and Corrective Action

- |                          |   |   |
|--------------------------|---|---|
| Tech. Services Admin.    | - | Acts for the Waste Operations Division Director in his absence regarding<br>permitting, closure, or corrective action issues. Authorized for responsibility of the<br>hazardous waste permitting and corrective action programs.  |
| Env. Engineer Consultant | - | Supervises and provides expert technical support and review of the hazardous<br>waste permitting, closure, and corrective action programs.  |
| Env. Engineer Senior     | - | Reviews HWM permit applications and drafts HWM facility permits, responds to<br>emergencies, reviews closure plans/financial assurance cost estimates, and<br>corrective action documents. Coordinates with EPA and enforcement regarding<br>facilities and provides technical assistance to owners/operators and others. |

### Groundwater Compliance and Support for Permitting/Corrective Action

- |                        |   |  |
|------------------------|---|--|
| Env. Engineer Conslnt  | - | Provides geologic and hydrogeologic expertise for the hazardous waste<br>groundwater monitoring and Corrective Action/groundwater corrective action<br>programs. Manages the hazardous waste program groundwater staff.  |
| Analytical Chem. Supv. | - | Provides assistance with QA/QC laboratory evaluations. Performs comprehensive<br>monitoring evaluations and operation and maintenance inspections of hazardous<br>waste facilities with groundwater monitoring.  |
| Geologist Senior       | - | Inspects hazardous waste management facilities with groundwater monitoring by<br>performing comprehensive monitoring evaluations and operation and maintenance<br>inspections. Reviews groundwater portions of hazardous waste management faci-<br>lity permit applications, closure/post-closure plans, and corrective action<br>documents. Drafts groundwater-monitoring portions of permits/plans. Provides<br>assistance to hazardous waste facilities and their consultants involved with<br>groundwater monitoring programs. |

### Compliance and Enforcement

- Asst. Div. Director - Provides second level of management and leadership for compliance staff and manages the enforcement program for the regions.
- Env. Program Analyst - Reviews financial assurance documents for TSD facilities.
- Analytical Chem. Supv.  
Env. Program Manager - Coordinates and supervises the compliance staff for the regional offices.
- Analytical Chem. Sr.  
Env. Inspector Senior  
Analytical Chemist - Conducts comprehensive evaluation inspections (CEIs) of hazardous waste TSD facilities and field inspections for other hazardous waste facilities/non-notifiers. Provides compliance information for regulated community and public. Additionally, provides guidance and assistance to junior staff and is responsible for more complex compliance issues.
- Env. Inspector - Conducts CEIs for hazardous waste facilities to determine compliance and field inspection for other hazardous waste facilities/non-notifiers. Provides compliance information to regulated community and public.
- Env. Program Planner - Provides effective enforcement support to regional offices regarding hazardous waste enforcement issues. Assist and manages exceptionally complex hazardous waste enforcement cases and assists with training and providing guidance to regional enforcement staff.
- Enforcement Specialist Sr. - Manages the more complex enforcement cases involving hazardous waste management facilities.
- Enforcement Specialist - Receives, assesses, refers, or initiates actions on enforcement cases to address violations of the regulations by hazardous waste facilities.

#### Program Development and Support

- Tech. Services Admin. - Manages and administers the technical support of the hazardous waste program. Reviews hazardous waste program and prepares authorization package for furthering state's program ability. Prepares amendment packages to the regulations in order to maintain consistency between state and federal program.
- Env. Engineer Senior - Provides headquarters' support to regional compliance staff regarding application of regulations, assistance with completion of commitment inspections, writes guidance and assists with training of regional compliance staff. Advises public and professionals on hazardous waste management issues.
- Env. Program Specialist - Manages and coordinates the RCRIS/BRS system. Reviews RCRIS/BRS forms to insure accuracy and inputs BRS data for biennial reporting. Supervises reporting and notification programs/issues provisional ID numbers.



- Env. Prg. Support Tech. - Maintains the data for the RCRIS system. QA/QCs all RCRIS entries in accordance with proper procedures.
- Env. Engineer Consultant - Provides management of the grant and acts as grant program manager regarding the workplan. Provides assistance regarding environmental justice efforts. Coordinates and performs tasks for environmental justice efforts.
- Env. Program Analyst - Administers the daily requirements for the hazardous waste program grant. Maintains and coordinates grant project status.
- Env. Engineer Consultant - Provides technical assistance for permitting/groundwater staff regarding QA/QC of environmental data and provides expert technical guidance and evaluation for statistical analysis procedures and risk assessment.
- Office Services Specialist - Maintains central file system for the hazardous waste program.

#### Waste Minimization

- Env. Program Manager - Directs the development, implementation and refinement of the pollution prevention/waste minimization program.
- Env. Engineer Senior - Maintains hazardous waste Capacity Assurance Plan for the state. Assists permitting/compliance/enforcement staff with waste minimization concepts.

#### Other

Legal services are available as needed for the Office of the Attorney General

In order to provide better assistance to the regulated community and the public, the Department has adopted a regional concept. There are six regional offices that are responsible for the compliance and enforcement efforts of the hazardous waste program. The regional staff can utilize the expert support staff that is located in the central office. These support staff are also important to providing consistency of the hazardous waste compliance and enforcement programs. The permitting, closure, and groundwater functions have remained in the central office because these programs are not extensive enough for regionalization and the direct access to technical experts is more readily available in the central office. These central office staff will also be responsible for the corrective action program.

#### **B. OVERALL CHANGES TO EXISTING RESOURCES FOR PREVIOUSLY AUTHORIZED PROGRAM**

The last authorization of the Virginia program for hazardous waste management was in 1984 with base authorization. In 1984, the Bureau of Hazardous Waste Management in the Virginia Department of Health consisted of approximately 15 professional staff persons and 4 clerical staff persons and a budget of less than \$500,000. The program focused on documenting and inspecting generators and interim status facilities. There were also major efforts to identify hazardous waste management activities that had not been covered by the initial notification process.

The program during the interim period doubled its staff and quadrupled its budget to its current configuration. The focus has shifted to permitted facilities and closure of facilities as interim status terminated for facilities. During this phase, the

number of generators and facilities declined; however, the complexity of the regulated activities and the number of wastes that are regulated has increased. The program has changed also in the emphasis on corrective actions to correct solid waste management units and other site deficiencies at permitted or closing facilities.

The budget for the 2000 fiscal year is five percent lower than the previous year and represents a lowering of available federal grant funds. In Table 2 funding is projected at a rate of growth of zero percent per annum based on unofficial federal funding estimates for the period. The Department intends to conduct any new tasks of the reauthorization within the 2000 fiscal year fund. If workloads prove to be unattainable within that funding, the Department will negotiate with USEPA the proper mix of funding and established program goals consistent with practical expectations. Inflation of program costs and the federal level funding support policy will result in an erosion of at least four percent in total financial support for the program and probable decline in achievable program goals.

### C. ITEMIZATION OF ESTIMATED COSTS AND SOURCES OF FUNDING

#### 1. Personnel

See Table 1. The table reflects current staffing in current assignments and is sufficient to undertake the current authorization sought in this application. No additional positions are expected to be added due to current federal and state level funding postures in the previous year and the 1999-2002 period.

#### 2. Funding - § 271.6(b)(2)

An itemization of the estimated costs of establishing and administering the FFY 2000, FFY 2001, and FFY 2002 programs, including cost of personnel and cost of administrative and technical support is presented in Table 2. Note that a projected level funding appreciation rate of zero percent per annum has been applied in projecting the years 2001 and 2002. Level funding does not account for inflation, and represents erosion of at least four percent in financial support for the program. This projection is based on the current USEPA program support estimates and policies.

Total Budget									
	Federal			State Match			Total		
	FFY 99-00	FFY 00-01	FFY 01-02	FFY 99-00	FFY 00-01	FFY 01-02	FFY 99-00	FFY 00-01	FFY 01-02
Personnel	\$ 1,023,948	\$ 1,023,948	\$ 1,023,948	\$ 341,315	\$ 341,315	\$ 341,315	\$ 1,365,263	\$ 1,365,263	\$ 1,365,263
Fringe	\$ 274,546	\$ 274,546	\$ 274,546	\$ 91,515	\$ 91,515	\$ 91,515	\$ 366,061	\$ 366,061	\$ 366,061
Travel	\$ 9726	\$ 9726	\$ 9726	\$ 3,241	\$ 3,241	\$ 3,241	\$ 12,967	\$ 12,967	\$ 12,967
Equipment	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Supplies	\$ 2,232	\$ 2,232	\$ 2,232	\$ 743	\$ 743	\$ 743	\$ 2,975	\$ 2,975	\$ 2,975
Contractual	\$ 6,000	\$ 6,000	\$ 6,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 8,000	\$ 8,000	\$ 8,000
Construction	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Other	\$ 8,512	\$ 8,512	\$ 8,512	\$ 2,837	\$ 2,837	\$ 2,837	\$ 11,349	\$ 11,349	\$ 11,349
Total Direct	\$ 1,339,962	\$ 1,339,962	\$ 1,339,962	\$ 446,653	\$ 446,653	\$ 446,653	\$ 1,786,615	\$ 1,786,615	\$ 1,786,615
Indirect	\$ 291,825	\$ 291,825	\$ 291,825	\$ 97,275	\$ 97,275	\$ 97,275	\$ 389,100	\$ 389,100	\$ 389,100
TOTAL	\$ 1,616,787	\$ 1,616,787	\$ 1,616,787	\$ 538,928	\$ 538,928	\$ 538,928	\$ 2,155,715	\$ 2,155,715	\$ 2,155,715

Table 2

2. Sources of Funds and Restrictions - § 271.6(b)(3)

Budget requirements for the present fiscal year 2000 are met through the funds made available by the federal grant (75%) and the funds appropriated by the Virginia General Assembly (25%). Recognizing potential shortages of the general funds in future years and the requirements for the growth of the hazardous waste management program, the 1983 General Assembly authorized the establishment a special fund to be supported by the permit application fees collected from the regulated community starting with the 1984-1986 Biennium (July 1, 1984 through June 30, 1986). This special fund is designed to cover all costs associated with the issuance of hazardous waste management permits and is not intended to defray the costs associated with the compliance and enforcement program. The latter program will continue to be funded from the general fund appropriations.

## SECTION 5. STATE PROCEDURES, PERMITTING, PROGRAMS AND COORDINATION WITH OTHER AGENCIES

### A. REGULATORY DEVELOPMENT - § 271.6(c)

The normal time frame for the adoption of a regulatory amendment by the Virginia Waste Management Board does not exceed 18 months between the cut-off date for federal changes and final adoption. Much of the time is devoted to the planning of the amendment and in the involvement of the public and the regulated community in the early formulation of the regulatory proposals. Availability of time to plan is important to the development of sound proposals.

The above discussion presupposes that no statutory amendments are required prior to the rule making process. Should the changes in the federal program require amendments to the Code, the overall rule-making schedule will have to be extended. Virginia General Assembly meets annually during the months of January through March. Any legislation adopted during the session normally becomes effective on July 1 of that year. Because of the narrow window available for the introduction of new legislation, the length of the overall rulemaking will depend on the timing of the federal actions that would necessitate new legislation. In general it is expected that rule making which involves statutory amendments will require at least two years to become effective.

The regulation promulgation procedure consists of the following steps:

#### 1. PRELIMINARY REVIEW

Executive Order Twenty-five (1998) requires that agencies obtain the approval of the Cabinet Secretary, the Department of Planning and Budget, and the Governor before publishing a Notice of Intended Regulatory Action (NOIRA). The intent of this review is to ensure that regulatory action is truly necessary before a NOIRA is published.

To obtain authorization to publish an NOIRA, the agency must submit a Preliminary Determination Package to the Cabinet Secretary and the Department of Planning and Budget outlining the reasons for promulgating a new or revised regulation. The Preliminary Determination Package must include the following information:

- a. A statement identifying and describing the source(s) of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions;
- b. A statement delineating the potential issues to be addressed in the proposed regulation, with any preliminary regulatory language that has been developed attached;
- c. A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulation's provisions are intended to solve; and
- d. A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose (identified in l.c. above), the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.

When the Secretary and Department of Planning and Budget (DPB) receive the pre-NOIRA review package, they will determine whether the contemplated regulatory action is necessary and whether it comports with the administration's policies. DPB will send its determination to the Secretary and the Governor. The Secretary will review DPB's recommendations and issue a determination. If the Secretary and DPB disagree about the necessity for regulatory action, the Governor must issue a final decision. If DPB and the Secretary agree in their determination, the Secretary first issues a determination to the Governor and then will issue the determination three days later to the agency unless the Governor intervenes. The Secretary may approve the package as submitted, require changes and re-submission, or disapprove publication of a NOIRA.

While the Department's Public Participation Guidelines do not require the Director to obtain the approval of the Waste Management Board to publish the NOIRA, the Board may be consulted.

## 2. NOTICE OF INTENDED REGULATORY ACTION

The Director determines the number, place and times of public meetings that will be held to gather comment. Because most of the changes are made in response to the changes in the federal regulations and the interested public is already well versed in the nature of changes, usually only a single meeting is held. The meeting must be scheduled so that the public has at least 30 days after the NOIRA's publication date to submit their comments. No official action (other than drafting documents) may be taken before the appropriate authority has had an opportunity to consider all comments received in response to the notice. If this rule is violated and the procedure is challenged, the new rules could be invalid.

## 3. DRAFTING OF PROPOSED REGULATION AMENDMENT

Agencies are permitted to begin drafting proposed regulations during the NOIRA period. To assist the staff in drafting of the regulation amendment, the Department selects and convenes an *ad hoc* Technical Advisory Committee that is normally composed of representatives of the regulated community, environmental groups, and citizens at large. The agency staff drafts the regulations. Working drafts are circulated internally and among the members of the Technical Advisory Committee.

Regulations, for which the NOIRA is published on or after January 1, 1995, must include an economic impact statement. It is at this point that estimates of economic impact are also formulated. The DPB is charged with the preparation of the Economic Impact Analysis. It is permitted to request the assistance of any agency in developing the analysis, but as a practical matter the proponent agency is required to provide DPB with a detailed draft analysis. DPB is permitted up to 45 days to review or redraft the analysis that must include the following components:

- a. The projected number of businesses or other entities to whom the regulation would apply;
- b. The identity of any localities and types of businesses or other entities particularly affected by the regulation;
- c. The projected number of persons and employment positions to be affected; and
- d. The projected costs to affected businesses or entities to implement or comply with such regulations.

The DPB Economic Impact Analysis should also determine the public benefit of the proposed regulation.

In order to provide additional information to interested citizens and to enhance public participation during the NOIRA comment period, the agency must electronically submit to the Commonwealth Regulatory Web Site the following information: (a) the four statements required in the Pre-NOIRA review package; (b) the beginning and ending dates for the NOIRA comment period; (c) the location and time of any scheduled public meetings where the regulation will be addressed; and (d) the name, address, phone number, and e-mail address of the agency contact for the regulation.

Executive Order Twenty-five (1998) requires that the Cabinet Secretary and DPB review proposed regulations before they are published. The Regulatory Review Package submitted to the Secretary includes eleven components:

1. A copy of the proposed new regulation or revision to existing regulation;
2. A copy of the proposed regulation submission package required by Virginia Code Section 9-6.14:7.1.H;
3. A statement identifying the source(s) of the state and/or federal legal authority to promulgate the contemplated regulation, including a description of the scope of the authority provided and the extent to which the authorized rulemaking provisions are mandatory or discretionary, together with an attached copy of all cited legal provisions;
4. A statement from the Office of the Attorney General indicating that the agency possesses statutory authority to promulgate the proposed regulation, and that the proposed regulation comports with the applicable state and/or federal law;
5. A summary of public comment received, along with any agency discussion;
6. A statement detailing any changes, other than strictly editorial changes, that the proposed regulation will implement, along with citations to the appropriate sections of the regulation, including cross-referenced citations when the proposed regulation is intended to replace an existing regulation;
7. A specific rather than conclusory statement setting forth the reasoning by which the agency has determined that the proposed regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulation's provisions are intended to solve;
8. A specific rather than conclusory statement describing the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered, and the reasoning by which the agency has rejected such alternatives;
9. A statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected;
10. A schedule setting forth when, no later than three years after the proposed regulation is effective, the agency will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated, and the specific and measurable goals the proposed regulation is intended to achieve; and
11. A statement identifying anticipated regulatory impacts that includes:
  - (a) the projected cost to the state to implement and enforce the proposed regulation, including:

- (i) fund source / fund detail;
- (ii) budget activity with a cross-reference to program and subprogram; and
- (iii) a delineation of one-time versus on-going expenditures;
- (b) the projected cost of the regulation on localities;
- (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; and
- (d) the agency's best estimate of the number of such entities that will be affected.

Because the review package must include the draft economic analysis, the regulations and all documentation should be prepared at least 60 days before the intended date for submitting the regulations to the Registrar of Regulations.

After the Waste Management Board and the Secretary of Natural Resources have approved the proposed regulations, the proposed draft is sent to the Registrar for publication in the *Virginia Register*. The package must contain the an explanation of the proposed regulations in a form of a statement containing the statutory basis for the proposed regulation, the purpose of proposed changes, a description of each substantive change, and issues describing why the regulation is necessary and differences of opinion in the regulated community and the general public.

In order to provide additional information to interested citizens and to enhance public participation during the comment period, the agency must electronically submit to the Commonwealth Regulatory Web Site the following information: (a) the four statements required in the review package; (b) the beginning and ending dates for the comment period; (c) the location and time of any scheduled public meetings where the regulation will be addressed; and (d) the name, address, phone number, and e-mail address of the agency contact for the regulation.

#### 4. PUBLIC COMMENT PERIOD

The Public Comment Period runs for a minimum of 60 days from the date the proposed regulations are published in the *Virginia Register*. The public may submit written comments at any time during the 60-day comment period or may present oral comments at a public hearing. All comments are a part of the agency's record. Executive Order Twenty-five (1998) requires promulgating agencies to submit summaries of all comments to the DPB, the Secretary and the Governor as part of the review process before publishing final regulations. The Department is also required to send each commenter a draft summary of comments at least five days before final action is taken to approve final regulations. This is intended to ensure participants that their comments are understood and relayed accurately.

The Waste Management Board's Public Participation Guidelines (9 VAC 20-10-10, et seq.) require that at least one informal hearing under § 9-6.14:7.1 of the APA be held at any time during the public participation period and preferably no less than 15 days prior to the close of the comment period. All comments, both oral and written, are summarized for the Board's review with draft responses to each comment. The summary and the proposed responses are sent to each commenter at least five days before final adoption of the regulation. The summary, the agency's response and the comments themselves become a part of the agency file and are available, upon request, to interested parties.

#### 5. LEGISLATIVE AND GUBERNATORIAL REVIEW, COMMENTS AND OBJECTIONS

During the 60-day comment period, the Governor reviews the regulations. The General Assembly may review them as well, but legislative review is uncommon. If the Governor comments on the regulation, his comments will be published in the *Virginia Register*. The Governor has the option of not issuing comments. The Governor, in agreement with the legislature, may delay the effective date of final regulations until after the next regular General Assembly session. (§ 9-6.14:9.2 of Code of Virginia)



The Legislative Committee of the General Assembly with jurisdiction over the subject matter of regulations may file an objection to the regulations with the agency and the Registrar. If this happens, the agency must respond to the Committee, the Registrar, and the Governor within twenty-one days of the receipt of the objection. If the objection is received during the final implementation period, the effective date of the regulation is postponed for at least twenty-one days.

## 6. FINAL REGULATIONS

While the agency may include changes suggested by the public, if the final version differs substantially, the public may petition the Board or the Department for an additional public comment period or to otherwise delay the effective date. In addition, the Governor may require an additional 30-day comment period if the changes are substantial. If the Board approves the final regulations, the regulation should be adopted through a motion that notes that any revisions have been approved and which empowers the staff to do those things necessary to comply with the APA and put the regulation into effect. The earliest possible effective date of the final regulation is the thirty-first day after the date of final publication in the *Virginia Register*. However, the agency may specify a later effective date or the Governor and General Assembly may require that the effective date be postponed.

- a. The Department prepares the Final Regulation to be submitted to the *Virginia Register*, the Department of Planning and Budget, the appropriate Cabinet Secretary, and the Governor's Office. The final submission must be made to all these entities at the same time.
- b. The final regulation package to the *Virginia Register* must be submitted in triplicate to allow the Registrar to return one copy date stamped as received for the Department's records. The package must include:
  1. The final regulations transmittal Sheet Form RR04.
  2. The statement of final action taken by the promulgating agency. This statement is usually made in one sentence. It should include the date the action was taken, the name of the agency taking the agency and the title of the regulation.
  3. A brief statement summarizing any substantial changes made after the proposed regulations was published.
  4. The Summary of Public Comment and Agency Response.
  5. A summary of the regulation or a summary of the amendments written on a separate sheet of paper. This is to be easy to understand and brief since it will be published in the Register immediately preceding the regulation.
  6. The final statement of basis, purpose and impact. This should be updated to reflect any changes to the original proposal. The Department must include the impact of any changes adopted since the proposed version was published.
  7. The final text of the regulations in double spaced format.
  8. A copy of any form(s) the Department uses in administering the final regulation.



9. On the last page of the final regulation, immediately following the text, certification information including space for the signature of the certifying official, the typed name and title of the certifying official, the typed name of the agency and the date of signature

The agency must submit the final regulatory review package to the Secretary, DPB, and the Governor at the same time that it submits a copy of the proposed final regulation to the Registrar pursuant to Va. Code Section 9-6.14: 9.1.B. The information provided in the final regulatory package must be submitted to the Commonwealth Regulatory Web Site prior to the commencement of the final adoption period

The regulated community is notified of the effective date of the regulation and of any substantive changes that have been adopted since the proposed version was published. If needed, the agency provides training to help implement the new regulations. When new forms are required, arrangements for printing and distributing the forms before the effective date are made. Also, if the Governor and General Assembly delay the effective date of the regulations, the regulated community is notified of the postponement. As warranted, additional efforts can be made, beyond the steps specified by the APA and the Public Participation Guidelines, to inform and assist the regulated community, and ease the transition from the old regulations to the new ones.

Persons affected by regulations may continue to have questions and comments during the implementation phase. No matter how carefully the process is planned, questions about details not considered are likely to arise. More detailed interpretations of the regulations can be provided through "Dear Colleague" letters, "Questions and Answers" in the agency newsletter, or through advisory letters.

#### B. NOTIFICATION

The Commonwealth has adopted in Part IV of its regulations equivalent notification requirements to the statutory provision of RCRA. All person who generate, transport, store, treat or dispose of hazardous waste are required to notify the Director using USEPA forms (Form 8700-12) or a format providing identical information. The information is entered into the RCRIS database (soon to be replaced by RCRAInfo) by the Department. Department staff will issue identification numbers if one does not exist, using the USEPA numbering system and format.

#### C. MANIFEST TRACKING SYSTEM

The Commonwealth has incorporated the federal requirements for manifests in 40 CFR 262 and elsewhere, including the uniform manifest forms. The Commonwealth's requirements are identical to the federal regulations. The Department compliance inspectors review the manifest records of the regulated party at the time of inspection or in special records review inspections. All manifests received are maintained in the compliance files at the appropriate regional office; however, the Commonwealth does not require a copy be sent to the Department.

#### D. COORDINATION OF INFORMATION REGARDING INTERSTATE AND INTERNATIONAL SHIPMENTS

All information received by the Department regarding interstate or international shipments will be sent to the regional compliance/enforcement manager for inclusion in the compliance file and for use by the inspectors. Any information received by the Department concerning international or shipments to other states will be forwarded to the USEPA regional office or the appropriate state if it appears that such information may have been received exclusively by the Commonwealth. The Department will provide the USEPA and other states with such information in its possession as

they may reasonably request. Further, if the Department can reasonably acquire such information that USEPA or another state has difficulty in acquiring, it will attempt to acquire the information and provide it as requested.

#### E. PERMITTING/CLOSURE/CORRECTIVE ACTION REVIEW PROCEDURES- § 271.6(c)33

##### 1. Permitting

Both the enabling legislation (Chapter 14, Title 10.1, Code of Virginia (1950), as amended) and the regulations (VHWMR 9 VAC 20-60-970) require a permit for the treatment, storage, or disposal of hazardous wastes. The regulations provide for specific inclusions and exclusions for various facilities described in VHWMR 9 VAC 20-60-970 A. and 9 VAC 20-60-970 B. and for specific prohibition of disposal of hazardous wastes by means of underground injection. To eliminate duplication of regulatory effort and to minimize the burden of duplicate requirements upon the regulated entities as provided for in §10.1-1402(9), Code of Virginia, the regulations also provide for the continued validity of federally issued permits (9 VAC 20-60-970 D.).

The operators of hazardous waste TSD facilities are required to submit complete applications to the Director (VHWMR 9 VAC 20-60-980) prior to construction of a new facility, and/or prior to expiration of an existing permit. The owners of the facilities operated by another party also are required to sign the application (VHWMR 9 VAC 20-60-980 B.). The parties who operate facilities subject to permits-by-rule, emergency permits and continued federal permits are exempt from the completeness requirements.

Hazardous waste management facilities that were in existence when RCRA was promulgated in 1980 are required to submit to the Part A application and, upon request, submit Part B Applications to the Director. This same procedure is also applicable to facilities that become newly regulated because of amendments to RCRA. Failure to submit Part B applications upon request results in the termination of interim status. In case of new facilities, Parts A and B have to be simultaneously submitted to the Director prior to construction of the facility. Construction cannot begin prior to the receipt of a finally effective hazardous waste management (HWM) permit, since Virginia does not provide for a two stage permitting process (VHWMR 9 VAC 20-60-980 E.).

All applications must be properly signed (VHWMR 9 VAC 20-60-980 C.1. and 9 VAC 20-60-1030 A.) and certified (VHWMR 9 VAC 20-60-1030 D.), and must contain information required by VHWMR 9 VAC 20-60-1000 (Part A) and VHWMR 9 VAC 20-60-1010 (Part B). The requirements contained in the latter section have been amended to reflect the latest federal requirements for surface impoundments, incinerators and land disposal activities. HSWA land-ban requirements have been addressed in Amendments 9 through 12.

Once an application has been determined to be technically complete, the Director will tentatively decide whether to prepare a draft permit or to deny the application, which is a type of draft permit. The requirements for the contents of the draft permit are contained in VHWMR 9 VAC 20-60-1180 C. In case of permits for major facilities or facilities subject to significant public interest, a fact sheet will be prepared. The contents of the fact sheet are specified in VHWMR 9 VAC 20-60-1190 B. Once the draft permit or the notice of intent to deny a permit have been prepared, Director will give public notice providing for the opportunity to comment and to request a hearing. The procedure allows at least 45 days for comments and requests. The Director will hold a public hearing either upon receiving a request or upon his own discretion in the absence of such a request, to receive written or oral comments which may clarify issues involved in permit decisions (VHWMR 9 VAC 20-60-1220). All persons contesting the permit or permit conditions have an obligation to raise issues and provide information during the public comment period (VHWMR 9 VAC 20-60-1230). Based on the merits of the application and the results of the public participation, Director will render the final permit

decision. At that time he will issue a response to the comments received which will be made available to the public (VHWMR 9 VAC 20-60-1240).

The mechanism for the appeal of a decision on the issuance or denial of permits is addressed in the Virginia Administrative Process Act (VAPA) in the Article dealing with the case decisions (Article 3, Chapter 1.1:1, Title 9, Code of Virginia (1950), as amended). Section 9-6.14:11 of VAPA provides for informal fact finding proceedings before the Director or his agent. These proceedings provide for the right of the parties to have reasonable notice to appear in person or by counsel, to have notice of any contrary fact basis or information, to receive prompt decision and to be informed of the factual or procedural basis for an adverse decision. This section enables the Department to first attempt to resolve controversies by consent. Should such consent not be achieved, § 9-6.14:12, VAPA, provides for the formal taking of evidence upon relevant fact issues. Decisions or recommended decisions and findings of act arising from such a formal hearing become a part of the record. In support of its fact finding procedures, the Department may issue subpoenas requiring testimony or the production of evidence subject to certain rights specified in § 9-6.14:13, VAPA. The final permit decision will be furnished to the applicants and, together with the full record or case file, will be made available for public inspection or copying subject to certain exceptions specified in § 9-6.14:14, VAPA. Any party aggrieved by and claiming unlawfulness of the permit decision has a right to the direct court review. The conditions and the mechanism of such review are specified in Article 4 of the Administrative Process Act, § 9-6.14:16, et seq.

The VHWMR provide for certain exemptions from the full permit issuance procedures: continued federal HWM permits (VHWMR 9 VAC 20-60-970 D.), interim status (VHWMR 9 VAC 20-60-990), permits-by-rule (VHWMR 9 VAC 20-60-1040), emergency permits (VHWMR 9 VAC 20-60-1050 A.), trial burn permits (VHWMR 9 VAC 20-60-1050 B.), and land treatment demonstration permits (VHWMR 9 VAC 20-60-1050 C.). VHWMR 9 VAC 20-60-1050 D includes Research and Development permits provided for by 40 CFR 270.65. These exemptions are based on the permissive authorities contained in § 10.1-1402(9) of the Code of Virginia (1950), as amended.

In accordance with VHWMR 9 VAC 20-60-970 D, hazardous waste management facilities that possess a RCRA permit issued by EPA are deemed to possess a valid permit in Virginia for the unexpired term of the EPA issued permit. Additionally, EPA permits, which were issued to Virginia facilities pursuant to HSWA requirements and constitute the federal portion of the combined Virginia-EPA permit, are considered as addenda to the Virginia permits and remain in effect for the unexpired term of the Virginia permit.

Facilities in operation on the date that applicable regulations become effective (i.e. "existing facilities") are considered to have interim status and are treated as having been issued a permit providing they meet the qualifications required by VHWMR 9 VAC 20-60-990 A. Changes during interim status may be approved if the requirements of VHWMR 9 VAC 20-60-990 C. are met. VHWMR provide for termination of interim status for cause as described in VHWMR 9 VAC 20-60-990 D. Such termination is subject to appeal procedures contained in VAPA and described previously. VHWMR 9 VAC 20-60-990 E. has been added by Amendment 8 to reflect HSWA requirements contained in 40 CFR 270.73 (a) through 270.73 (f).

Owners or operators of vessels used for ocean disposal and owners and operators of publicly owned treatment works are deemed to have a hazardous waste management permit if the conditions listed in VHWMR 9 VAC 20-60-1040 are met. Since Virginia regulations specifically prohibit disposal of hazardous waste by underground injection, no "permit-by-rule" provisions exists for such disposal.

In cases of imminent and substantial endangerments to human health or the environment, the Director may issue temporary emergency permits. The conditions and limitations on such permits are described in VHWMR 9 VAC 20-60-

1050 A. The Virginia requirements for the trial burn permits as shown in VHWMR 9 VAC 20-60-1050 B are based on the federal requirements.

VHWMR 9 VAC 20-60-1060 describes conditions applicable to permits and specifies various duties and requirements to be expressly addressed in each permit. The manner of establishing such conditions is described in VHWMR 9 VAC 20-60-1080. The administrative requirements concerning the effects of a permit, transfer of the permits, schedules of compliance, and requirements for recording and monitoring results are contained in VHWMR 9 VAC 20-60-1100 through 9 VAC 20-60-1130. The duration of the Virginia HWM permit is limited by regulation to at most 10 years (VHWMR 9 VAC 20-60-1090). The requirement to review land disposal permits is contained in 40 CFR 270.50(d).

Virginia regulations provide for modification, revocation and reissuance, or termination of permits. The Virginia program in its Amendment 10 adopted the modification procedure streamlining promulgated by EPA. The general administrative rules are shown in VHWMR 9 VAC 20-60-1150 A., those for modification or revocation and re-issuance in VHWMR 9 VAC 20-60-1150 A., and those for termination in 9 VAC 20-60-1160. Modifications, revocations, re-issuance and notices of intent to terminate are considered to be a type of the draft permit and are governed by appropriate regulations mentioned previously. Virginia Administrative Process Act procedures are applicable in all such cases.

During FFY99 approximately 12 person-years of effort was devoted by the Commonwealth regarding the issuance of the State permits associated with treatment/storage facility permits, post-closure permits, closure plans, and the support of certain HSWA requirements (such as worksharing for boiler/industrial furnace (BIF) permit application reviews and corrective action). Upon receipt of the Final Authorization, the Commonwealth had assumed the responsibility for the land disposal facilities permits called in by the EPA in 1984 and proceed with the permit process. As the result of HSWA requirements, all land-based facilities in the Commonwealth elected to undergo closure proceedings rather than continue the operation beyond November 8, 1988. The Department reprogrammed its resources into the issuance of post-closure permits and meeting the other deadlines established by the HSWA. The Department met the deadline for incineration facilities and has called in Part B applications for all other remaining facilities. To date, all treatment and storage facility operating permits have been issued except for 2 BIF facilities; post-closure permits under study; Subpart X units, for which guidance was more recently issued by EPA; and for facilities that became newly regulated as a result of new waste listings, such as TCLP.

## 2. Facility Closure Plan Reviews - § 40 CFR 271.6(b)(1)

The staff engaged in the hazardous waste permitting program also performs plan reviews (e.g., closures) and assists the regulated community with technical advice regarding closure of hazardous waste management units. Closure of regulated hazardous waste management units is performed per the closure standards of the 40 CFR 265 and 40 CFR 264. Operators of permitted hazardous waste TSD facilities are required to submit notification to the Director prior to commencement of partial or final closure. This notification allows the Department the ability to review the permit's closure plans to insure compliance with current standards. Additionally, interim status facilities are required to the same requirements for the closure plan (including contingent and post-closure plans, as applicable). Once received, the closure plan is made available for public comment for 30 days. The Director will then approve or disapprove the plan. If disapproved, the facility may appeal the decision in accordance with the VAPA or submit a modified or new plan. If the new or modified plan still is deficient, the Director may modify the plan that will then become the approved plan.

Once the plan is approved, the facility is required to close the unit within the appropriate time as allowed per VHWMR 9 VAC 20-60-265 B. Certification of closure and supporting documentation is required to be submitted to the Director within 60 days of each closure (whether partial or full). The certification is signed by the owner or operator and by an

independent, registered professional engineer. Additionally, if the facility closes the unit with hazardous constituents left in-place, appropriate post-closure care must be implemented in accordance with VHWMR 9 VAC 20-60-265 B.

Facilities with unauthorized hazardous waste management units are identified by the compliance inspections and required to close these units through enforcement actions as described in the Enforcement Manual. Closure plan submittals for these facilities follow a similar procedure for review and approval; however, the standards for permitted units (VHWMR 9 VAC 20-60-264) are applied.

### 3. Corrective Action Program - 40 CFR §271.6(b)(1)

The Commonwealth uses a prioritization system that provides results consistent with national priorities to address the most environmentally significant sites first. Virginia has actively participated in and supported EPA's effort to rank Virginia's sites using the National Corrective Action Prioritization System (NCAPS). Virginia will continue to use this system in the future for new sites, or sites which still need to be ranked. Virginia will support EPA Region III's efforts to meet Government Performance for Results Act (GPRA) goals by addressing high priority sites first, and by continuing to address these high priority facilities until groundwater releases and human exposures have been controlled.

Corrective Action activities (interim measures, RFAs, RFIs, CMSs, CMLs, etc.) will be completed using current EPA guidances, manuals and policies. The State makes consistent progress toward completing cleanups. Virginia has been participating in a workshare program with EPA Region III since 1990, with increased emphasis over the past three years on assisting EPA Region III in performing Corrective Action functions. The early 1990's functions consisted of performing RCRA Facility Assessments and drafting Corrective Action permits on behalf of EPA Region III. This fiscal year's involvement included drafting Corrective Action permits, performing Environmental Indicator determinations, performing NCAPS assessments, drafting Findings of Fact for Corrective Action orders, and performing technical support through document review and meeting attendance at numerous facilities that have entered the Corrective Action process. Based on the end-of-year reports for the last three fiscal years, EPA has been complimentary of Virginia's document reviews and Corrective Action activities. With the assistance of Virginia's worksharing efforts, sites currently in the active Corrective Action universe have progressed steadily toward completing cleanups.

The State consistently meets corrective action grant commitments, or is making significant improvements toward meeting commitments. Virginia has met, and in many cases exceeded, its corrective action grant commitments over the last three years. During each of the last three fiscal years, Virginia has been amenable to taking on additional corrective action projects that have arisen during the course of the year after the initial grant commitment had been negotiated. Many of these projects involved a rapid turn-around, which Virginia has always been able to provide. During FY98, several of Virginia's Corrective Action staff received commendations from EPA Region III for their Corrective Action worksharing efforts based on the Region's newly initiated process for evaluating States on worksharing projects.

As the base program permitting and closure universe has decreased, Virginia has continually increased the amount of corrective action worksharing included in the annual work plan. Virginia's capability to increase the volume of corrective action work performed should continue to increase with the significant reduction in the backlog of closure facilities that has taken place over the past few years, which was discussed previously. Staff have been trained in various aspects of the corrective action process, and are prepared to take the lead for corrective action at facilities for which Virginia is to assume full responsibility. Virginia is in the process of creating its own multi-media database, CEDS (Comprehensive Environmental Data System), which will be available on-line to the citizens of Virginia.

Virginia incorporated portions of the Land Disposal Restrictions and RCRA Subparts AA and BB regulations into its program in 1993. The staff has been trained on these aspects of the regulations. Since incorporation of these



provisions into the regulations, inspectors have been inspecting facilities for compliance with these provisions. Permitting staff members have been performing extensive worksharing activities in Corrective Action for the last three fiscal years, with less extensive Corrective Action worksharing efforts beginning in the early 1990s.

The permitting staff is also responsible for the Corrective Action program. This staff is currently involved with USEPA through worksharing efforts with EPA Region III's Corrective Action staff. Virginia staff has been involved with worksharing efforts since FFY95. This worksharing has involved review of documents and reports, oversight of field work, inspections, public notice participation, assistance with assessment and ranking of Virginia facilities, and, during FFY96, Virginia, with assistance from EPA, will issue a post-closure permit that will include the HSWA portions. Additionally, during FFY96, a week of EPA provided training on the RCRA Corrective Action program was completed in August of 1995. All permitting staff attended this training as part of our efforts to increase their skills and abilities to implement a Corrective Action program in Virginia. Additionally, steps have been taken to establish corrective action staff positions within the Office of Waste Permitting Management. There will be four "core" corrective action staff for implementation of this program in Virginia; however, this effort is contingent on funding and position allocations for the hazardous waste program. Over the next few fiscal years, the Department hopes to "phase" into a full corrective action program.

#### F. INTERIM FACILITY STATUS

At 9 VAC 20-60-265, the Commonwealth has incorporated 40 CFR 264 and has identical requirements for interim status with the more stringent exception that interim facilities are required to comply with the same provisions for closure and post-closure care that apply to permitted facilities.

#### G. BIENNIAL REPORTS

The Commonwealth's regulations incorporate the federal regulations regarding biennial reporting and are identical in their requirements. Reports are processed through the Biennial Reporting System and RCRIS process. A new Oracle®-based system "RCRAInfo" will supercede both older systems during FFY 2000. While the details concerning the operation of RCRAInfo are not currently available, the system will be a cooperative effort between the Department of Environmental Quality and USEPA and the data will be shared through the system.

#### H. ENFORCEMENT GENERAL INSPECTIONS

Inspections are conducted by the regional inspection staff using checksheets. Because Amendment 14 incorporated much of the federal regulations as regulations of the Commonwealth, the Department has adapted the checksheets in use by USEPA and developed an additional checksheet for requirements that are unique to the Commonwealth's regulations and program (see appendices).

Inspectors are retrained at least annually on safety and program basics. Semi-annual meetings are normally held for training updates on new regulations and procedures. Extensive specialized training on special issues are offered as lectures or materials become available. The Hazardous Waste Compliance Coordinator also frequently accompanies inspectors to provide on-the-job training, especially to less experienced inspectors. The Compliance Coordinator also develops and distributes specific guidance papers on special topics like the management of batteries.

Because of the limited availability of funds, inspection priorities and goals are negotiated with USEPA Region III staff to accomplish the best mix to satisfy the Commonwealth and federal program. The annual goals are divided into quarterly goals and monitored by the RCRIS Coordinator and the Hazardous Waste Compliance Coordinator.

## I. GROUNDWATER MONITORING INSPECTIONS

Groundwater inspections are conducted by geologists and engineers from the Office of Waste Permitting staff, often in cooperation with the regional compliance inspectors. Samples are collected in accordance with an approved (1999) quality assurance/quality control plan and submitted to commercial laboratories for analyses. The results are review by the permitting staff, and the results are submitted to RCRIS and the regional compliance inspectors.

## J. WASTE MINIMIZATION/POLLUTION PREVENTION

The Department, through its Office of Pollution Prevention, participates in the Region III Waste Minimization Team, supports goals of the Waste Minimization National Plan, and provides free, voluntary, non-regulatory, technical assistance and materials to industry, governments, academia, non-profits and the general public on how to prevent pollution. It distributes fact sheets, newsletters, industry specific prevention guides, videos and other materials to the public. It holds seminars and training sessions. It visits industries and consults on the ways pollution prevention ideas can be implemented by the company. The current focus is on companies generating persistent, bioaccumulative and toxic chemicals in hazardous waste.

## K. AVAILABILITY OF INFORMATION PROCEDURES

The public may obtain information related to the hazardous waste management program from the Department's web site, [WWW.DEQ.STATE.VA.US](http://WWW.DEQ.STATE.VA.US), or by submitting a request to Director, Division of Waste Program Coordination, Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009. A small fee may be associated with large or difficult requests to cover the cost of duplication. A formal request under the Virginia Freedom of Information Act (VFOI) may be made by submitting the request to Director, Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009. All VFOI requests are tracked and responded to in accordance with the Act. The VFOI specifically addresses citizens of Virginia; however, the Department attempts to process FOIA requests from outside of Virginia under the same procedures, except that response times may exceed those for Virginia citizens.

Except for information submitted as part of the Pollution Prevention Program, the Department will not hold information as business confidential. The Department will attempt to return to sender any information marked as confidential, but is not responsible for maintaining its as confidential.

## L. APPEAL PROCEDURES

Anyone with standing who is aggrieved by any action of the Department should notify the Director at Director, Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009. All appeals and requests for a case decision will be governed by the Virginia Administrative Process Act. Both informal and adjudicatory procedures are available under the Act. Persons with standing may also seek judicial review directly in the Virginia circuit court of venue.



## SECTION 6. COMPLIANCE TRACKING AND ENFORCEMENT

### IDENTIFICATION OF REGULATED COMMUNITY, INSPECTIONS AND WORKLOAD ANALYSIS, DATA MANAGEMENT, COMPLIANCE MONITORING AND ENFORCEMENT PROCESS

In the fulfillment of its grant commitments, the Department has formulated a comprehensive enforcement strategy. A revised Enforcement Manual reflecting the reorganization of the program functions is shown in Attachment 6 to this document. The enforcement strategy has been revised to reflect the changes in law effective July 1, 1999. The following description is keyed to the appropriate sections of Part 271, Title 40, Code of Federal Regulations, and only briefly address most pertinent highlights. It should be read in conjunction with the formal Enforcement Manual document.

#### A. General - Section 271.6(e)

Virginia's enforcement procedures are based on the Virginia Waste Management Act, the Virginia Administrative Process Act, and current regulations and are consistent with federal requirements under 40 CFR Section 271.6(e).

VHWMR Parts II and XI, and other pertinent sections of Virginia's regulations, assure that operations of hazardous waste management facilities are conducted in accordance with State standards and that permits issued by the State meet the requirements for Final Authorization. This includes compliance by hazardous waste generators and transporters.

More specifically, VHWMR Part II and 9 VAC 20-60-1060 I authorize the State to conduct all necessary inspections, investigations, sampling and follow-up activities required to assure compliance. Coordination with state agencies and the federal Department of Transportation is assured under Part VII.

#### B. Identification of the Regulated Community

In the fifteen years since base authorization was granted the universe of hazardous waste has changed and grown. The inclusion of new listed solvents brought many small generators under the rules. BIF rules brought new facilities under the regulations. Recently, Amendment 14 brought the handlers of waste oil within the regulations by the incorporation of 40 CFR 279. Universal waste rules will bring additional handlers under the regulations.

In the 1984 program, identification of non-notifiers was a major compliance effort. In 2000, identification of non-notifiers has diminished by successful past investigations and broader education in the affected community. In 2000, new business are much more likely to manage their environmental responsibilities before beginning operation and are better informed about the laws and regulations that apply. Also, the solid waste facilities, fire and police officers, and many others are likely to spot inappropriate activity and know the Department as the place to report suspected acts. When new wastes were added to the hazardous waste category, the Department surveyed industries in the state that might produce waste in that category and visited selected sites to determine the pattern of use in the business community. The Department also operates the SARA Title III program and has information available to it from its Clean Water Act and Clean Air Act programs, among others.

### C. Inspections and Workload Analysis

The Department's current level of staffing (shown in previous sections) is capable of performing the authorized program with negotiated VDEQ/USEPA goals. An expanded and enhanced program would be desirable, but does not seem likely with level funding. However, there are compensating circumstances that may help maintain a high quality program. For example, as the workload of the latest cycle of permitting and closure diminishes, the manpower may become available to provide additional effort in corrective actions. This allows for a transition plan to be implemented to shift the corrective action workload from USEPA to the Commonwealth. This kind of cooperation is especially desirable since it leads to a mentoring situation and insures that the highest level of expertise possible is available for that effort.

### D. Data Management

One way that the Department and USEPA have and will be able to manage the increasing effort is by more sophisticated data management. In 1996 the Department began direct input into the RCRIS database system and assumed total management of the Virginia RCRIS sector in 1997. Today the Department manages both the Biennial Reporting System and RCRIS for the Commonwealth's sector. In 2000, these data base move into an ORACLE® system called RCRAInfo with the Department remaining responsible for management of the Commonwealth's sector. The Department is also developing an ORACLE® system called CEDS2000 which will eventually integrate major Department databases including RCRAInfo and make it available throughout the agency. If successful, it may integrate with other Commonwealth programs and may be available to the public.

The use of these modern tools is not only efficient and reduces the need for additional staff, it encourages other efficiencies. For example, most BRS data is now submitted by the regulated community in a digital form, thus eliminating most key entry tasks. The Department believes any increased program demands for data management will be absorbed by the increasing efficiency of the new systems.

### E. Compliance Monitoring

In addition to new inspectors in the regional offices since the 1984 base authorization, the Department has added new regional compliance managers and a compliance program coordinator in the headquarters. These individuals have established a system of continuous communication and consultation to maintain the quality and consistency of the compliance program. They have developed and implemented a quality assurance and quality control program for groundwater sampling. Further, the Department has established an inspector training program, including a semiannual training meeting and annual short schools, special sessions for new program element (air emissions standards, for example) and the hosting of EPA-sponsored seminars and similar seminars by national organizations. These existing efforts are felt to be adequate to carry on the fully authorized program.

### F. Enforcement Process

#### a. Pathways - § 271.15(b)

The primary pathway by which violations come to the Department's attention is the regularly scheduled compliance evaluation inspection. While such a process is resource intensive, there is no feasible substitute for a thorough inspection and physical inventory of all required safeguards and documents to determine a meaningful compliance with all the requirements. To insure that the resource expenditures are optimized, the Department established the following prioritization scheme listed in the decreasing order of priority:

- Reinspection of all handlers with unresolved non-compliance history;
- Annual inspection of all Federal/State/Local TSDs
- Annual and special inspections of major handlers;
- Biennial inspection of other treatment and storage facilities; and
- Other generators and transporters, including hazardous waste fuel generators, burners of used oil and mixed waste generators.

Prior to each field inspection, the entire record of the handler is reviewed in the office to ensure that the inspector knows about all pertinent documents.

Virginia's compliance monitoring and enforcement procedures do not distinguish between interim status facilities and facilities that have received final permits, even though the standards against which compliance is evaluated differ substantially. Additionally, much of the evaluation of the adequacy of the planning documents (prevention and preparedness, contingency, laboratory testing, environmental monitoring, closure and post-closure, etc.), presently performed at the facility being inspected in the course of the evaluation, would be carried out during the permitting process. Therefore, inspecting against permit conditions will save considerable field time. Thus, the workload associated with the evaluation program is expected to remain essentially unchanged.

The number of inspections and priorities for inspections for future years will be negotiated annually between the Commonwealth and the Region as part of the grant process and will reflect the annual RCRA guidance. In addition to regularly scheduled compliance-assurance visits, the Department investigates all reported or suspected violations brought to its attention by other State Offices (e.g., Department of Labor, Department of State Police, local health Departments, etc.) or by private citizens. As part of our regionalization concept, attention to these reported/suspected violations is increased, as the staff performing the compliance-assurance visit is more accessible in the regional offices.

The last pathway by which violations are detected is the review of documents required for periodic submissions such as the financial responsibility requirements and the biennial generator, transporter and treatment, storage and disposal facility reports.

The Virginia Regulations Governing Transportation of Hazardous Materials (9 VAC 20-110-10, et seq., Attachment 7) are enforced by the Virginia Department of State Police and local law enforcement officers that have received training in hazardous materials transportation. Any violations of the Hazardous Waste Management Regulations detected in transit are reported to the Department for further enforcement. The staff routinely inspects fixed transportation facilities of transporters of hazardous waste.

b. Violation Classification - §§ 271.6(e) and 271.16(c)

While every instance of non-compliance with the regulatory requirements must be corrected, the inherent nature of the regulations dictates a graduated response to the situations encountered in the regulated community. Such graduated response will depend very heavily on the context of the circumstances prevailing at the management level, history of non-compliance with the regulatory requirements, failure to perform necessary preventive actions and failure to establish the effective management systems and controls, as well as the possibility that non-compliance with regulations might result in an economic benefit to the violator.

DEQ ensures that the compliance inspection staff performs high quality inspections and prepares complete and accurate inspection reports following the principles established in the OECA Inspection Guidance Manual and in accordance with the 1996 Enforcement Response Policy. DEQ also maintains an internal inspection guidance manual, which includes current inspection checklists, compliance assistance materials, and inspection procedure protocols. DEQ conducts a semiannual training seminar for inspectors to address new issues, regulation changes, and review established agency procedures, and provides several EPA sponsored training opportunities on specific topics throughout the year. DEQ central office evaluates and ensures consistency in the quality of the regional inspection program by review of inspection reports, joint inspections with each regional inspector, a monthly conference call with regional staff to address specific compliance related issues, and by providing daily technical assistance to regional staff through the hazardous waste compliance coordinator.

The Department takes timely and appropriate enforcement action and makes Significant Non-Compliance (SNC) designations in accordance with the 1996 Hazardous Waste Enforcement Response Policy and the 1999 Virginia Department of Environmental Quality Enforcement Manual.

Internal consistency of the classification system is achieved through the personal involvement of the Assistant Regional Division Directors of Compliance, the Regional Environmental Program Manager, and the Central Office compliance and enforcement support staff. Additionally, the enforcement guidance is utilized to promote consistency between the regions. Before a course of action is selected, the violations are put into proper historical and factual contexts to ensure a fair and measured response to the discovered non-compliance.

[Note: also see Enforcement Manual, Attachment 6, for additional details of the classification system.]

c. Enforcement Events and Tools - § 271.6(e)

The typical chain of events from the point of detection of a violation to its final administrative disposition is shown in Attachment 6.

When a violation occurs that is found to require an emergency action to correct nuisance dangerous to the public life and health, the Waste Management Board (or the Director when the Board is not in session) is authorized to issue separate orders and regulations pursuant to § 10.1-1402(17), Title 10.1, Code of Virginia (1950), as amended. Alternatively, the violation may be referred to the Office of the Attorney General to seek a temporary restraining order or other appropriate remedies from the civil court. When such an emergency situation arises, the departmental staff will immediately contact both the Attorney General's Office and the Director for instruction and an authorization to proceed with the alternative selected. Should the information indicate that the violation was a knowing act (§ 10.1-1455B, Code of Virginia (1950), as amended), the Director may refer the case to the Department of the State Police to initiate the appropriate criminal investigation. The 1990 amendments to the Virginia Waste Management Act increased the fines from \$10,000 to \$25,000 and the maximum term of imprisonment to 5 years and have added the provision for "knowing

endangerment" that is somewhat stricter than its equivalent RCRA § 3008(e). The 1999 General Assembly session added other authorities that are discussed in the Demonstration of Adequate Authority.

In case of violations that do not require an immediate action, the inspector and the Regional Waste Compliance Manager, with the assistance of the Central Office staff, if needed, determine the proper classification of the non-compliance discovered as the result of a compliance-assurance visit or the record review procedure. The detailed procedures are shown in Attachment 6.

d. Penalty Assessment - § 271.16(c)

Paragraph 10.1-1455D, Title 10.1, Code of Virginia (1950), as amended, applicable in general to the penalties imposed by the Board or the Director provides that willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified. In addition, § 10.1-1455B provides that 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 any false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment 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. An amendment at § 10.1-1455 I provides that any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense, whichever is greater. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person. Cases of such nature are brought before an appropriate court by the Commonwealth attorneys and may be investigated by the Bureau of Criminal Investigations, Department of State Police, the Federal Bureau of Investigation, or local police authorities. The Department coordinates with those agencies by participating in several regional environmental crime task forces.

In § 10.1-1455 C, the Board is authorized 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. In § 10.1-1455 G, the Board may issue administrative orders for the violation of: (i) any law or regulation administered by the Board; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the Board. Issuance of an administrative order shall be a case decision. Administrative Orders issued pursuant to this subsection may include penalties of up to \$25,000 per violation and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or mailed by certified mail to the last known address of such persons. Should the Board find that any person is adversely affecting the public health, safety or welfare, or the environment, the Board shall, after a reasonable attempt to give notice, issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and 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 emergency administrative order. If the Board finds that a person who has been issued an administrative order or an emergency administrative

order is not complying with the order's terms, the Board may utilize the enforcement and penalty provisions of this article to secure compliance.

Paragraph 10.1-1455D, provides that any person violating, neglecting, or refusing to obey any lawful regulation or order of the Board or the Director may be compelled in a proceeding instituted in an appropriate court. In addition to this general requirement, § 10.1-1455A provides that such persons that violate any provision of the VWMA or any regulation or order of the Board adopted pursuant to that article shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not exceeding \$25,000 for each day of violation. Section 10.1-1455F provides that with the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board or Director or any provision of Virginia Waste Management Act, as amended, the Board may provide, in an order issued against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limit specified in § 10.1-1455. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Section 10.1-1455 E provides that without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation.

VHWMR, 9 VAC 20-60-70 G, provides for the public participation in the enforcement process by requiring that all citizen complaints be investigated and responded to in writing, not opposing on intervention and by publishing notices of any settlements of civil enforcement action.

Civil penalties sought or agreed upon by the Department will be commensurate with the violation. The actual penalty will take into account:

- An amount appropriate to address harm or risk to public health or the environment;
- An amount appropriate to remove the economic benefit from the delayed compliance;
- The degree of recalcitrance, defiance or indifference on the part of the violator;
- Extraordinary cost of investigations, inspections, or monitoring incurred by the Commonwealth; and
- Factors beyond the violator's control.

Civil charges provided for in § 10.1-1455 F would normally be sought from violators that may have gained significant economic benefit from non-compliance, from violators who might perceive that an order is not a sufficient deterrent or who might otherwise not act on an order, or SNCs. The amount of such charges will take into account the factors listed for civil penalties and be in accordance with the follow OCEA civil enforcement policy for RCRA.

[Note: also see Enforcement Manual, Attachment 6, which contains the waste penalty policy, civil charge policy and other detailed description of the enforcement policies and procedures.]

e. Legal Staff Resources - § 271.6(b)

The Virginia Hazardous Waste Management Program is supported by an Assistant Attorney General and by other assistant attorney generals as needed who furnish support expertise and representation in all matters of enforcement, permit issuance, and program development. Additional support may be received from other attorneys should the need



arise. The routine direct access in these cases, as a matter of the internal policy of the Department of Environmental Quality are limited to the Director, Division Directors, the Regional Directors, the Regional Assistant Directors, Office Directors, and specified others. In case of an emergency need for legal assistance, all members of the Department have and will continue to have direct access to the attorneys.

#### G. Inspection Practices and Procedures

##### a. Types of Inspections - §§ 271.15(b) and (d)

It is the policy of the Department to perform compliance evaluation inspections (CEI) of persons engaged in hazardous waste management subject to Virginia regulations. These comprehensive surveys are performed during all field visits irrespective of the nature of the handler (generator, transporter, or operator of a facility) or the reason for such a visit (periodic inspection, compliance reinspection, investigation of a complaint, result of the record review). This policy is based on the philosophy that the resources expenditures involving travel justify expenditure of time required to perform CEI's and would often eliminate the need to schedule a routine periodic inspection at a later date, thus saving resources for both the State and company personnel. As a part of each CEI, all applicable checklists are filled out. These checklists are filled out at the time of CEI or shortly thereafter in the office. A copy of completed documents is mailed to the inspected activity, along with a letter summarizing the results of the visit and requiring corrective action, if any. The priority of scheduled (periodic) visits has been described previously in Section F.2 (a) of this document.

Compliance reinspections are performed, in general, as soon as possible after the expiration of the compliance deadline except in cases when full compliance may be achieved by the violator by furnishing the Department merely the corrected version of the deficient documents. Should a visit be indicated, reinspection is always coupled with a CEI as mentioned above.

Unless the investigation of a complaint indicates that the activity should not be regulated under Virginia Hazardous Management Regulations, a CEI may be performed at the time of the visit. As mentioned in Section F.2(a) of this Document, all reported or suspected violations are investigated by the Department. The investigation would involve a visit if the information is available to locate the site of the violation.

In addition to scheduled compliance evaluation inspections, the Department performs comprehensive groundwater monitoring evaluations at a number of major facilities. These evaluations are intensive investigations into the engineering and hydrogeologic features of the ground water monitoring system in place at interim status, land disposal facilities. These groundwater inspections are performed by the Central Office's Office of Groundwater/Corrective Action staff.

Whenever sampling is performed, the field personnel observe the following chain-of-custody procedures:

- each sample is uniquely identified and numbered;
- a field chain-of-custody document is prepared (see Attachment 9);
- each sample is sealed and the seal is signed by the collector;
- all samples collected are either kept in view of the sample collector or placed in a locked box with the key kept on the collector's person;



- upon completion of the sampling the locked box and the custody document are placed within a cooler or another large overpack container;
- the overpack container is sealed with tape and seals are signed by the sample collector;
- in case of an in-State laboratory, the container is transported by the collector to the sample custodian of the laboratory, or in case of out-of-state laboratory to a common carrier; and
- the container is surrendered against a receipt.

Forensic samples leading to a possible criminal prosecution are taken to the Department of Criminal Justice Services or a contract laboratory, if the state laboratory cannot support the analysis required, and are handled by the laboratory in accordance with standard procedures accorded to such samples. Other samples are either taken or sent to contract laboratories.

In addition to various field inspections described above, the Department conducts reviews of records pertaining to groundwater monitoring, closure and post-closure plans, financial documents, exception/discrepancy reports, and the required periodic reports. These record reviews are conducted both on a scheduled basis timed to follow shortly upon the expiration of the reporting deadline and prior to each CEI, when all records pertaining to the activity are reviewed by the person who will perform the inspection. A review of the records that are required to be kept at the activity are routinely performed during each CEI.

b. Inspection Personnel - §§ 271.6(b)(1) and 271.15(b)

Only the members of the Department perform inspections and record reviews. The program has not used in the past, nor does it intend to use in the future, contractor personnel to perform any compliance evaluation action. The only exception to this policy is the use of contract laboratories for performance of analyses.

c. Personnel Qualifications - § 271.6(b)(1) and 271.15(b)

All personnel engaged in field inspections are required to be technically proficient in the basic sciences such as chemistry, hydrogeology, and environmental science. Senior staff holds higher level degrees or have extensive experience in the environmental science field. All newly hired personnel undergo internal training by the experienced members of the Department, in all aspects of the RCRA program, before they are scheduled to perform independent work. Whenever EPA seminars, workshops or short courses are announced, the maximum available staff is encouraged to attend. The intent of the training program is to foster broadest competence in all aspects of the RCRA program. Experienced personnel attend technical refresher training, research and development oriented seminars, and conferences sponsored by the professional societies in their own professional field. The Department has also initiated a tuition reimbursement program to assist staff that is attempting to obtain higher level degrees within the environmental field.

H. Compliance/Enforcement Organization - §§ 271.6(b), 271.6(e) and 271.15(b)

As shown in Table 1 the present compliance and enforcement staff contributes over 15.85 man-years to the hazardous waste management program. This level of effort is sufficient to carry out the program's enforcement and compliance responsibilities.

The Department does not plan to rely on EPA contractors to provide technical support for the compliance/enforcement program. Should such a requirement materialize at a later date, the Virginia program will supplement its expertise in the combustion engineering area by obtaining assistance from the Air Operations Division.

The Commonwealth is committed to the policy of resolving all instances of non-compliance identified through various pathways mentioned above at the earliest feasible time. The overall strategy integrating immediate and long-term objectives and of the appropriate program measurements is shown in Attachment 6 to this document.

I. Radioactive and Hazardous (Mixed) Waste Management Capabilities - § 271.6(b)(1)

Department of Environmental Quality personnel, by virtue of their college education, training, and experience, have the ability to effectively regulate mixed waste. There is trained staff in the Department with the experience and expertise necessary to ensure that proper procedures will be followed to eliminate any radioactive exposure hazard that might be posed to state inspectors during site inspections of mixed waste units. Members of the staff have received intensive health physics training such as intensive training in radiation physics. Others have experience as health physicists in the nuclear power industry. Since the activation of the security clearances is normally based on the specific need, the Department will take appropriate (as needed) steps when it receives the program authorization.

J. MANIFEST SYSTEM - § 271.6(f)

The Commonwealth has elected to incorporate by reference and follow the federal manifest system procedures and has not required submission of the individual manifests to the Department for processing. However, the Commonwealth does require submission of the biennial reports by the generators, transporters, and owners or operators of TSD facilities.

The VHWMR by incorporated federal text requires the use of manifests by all that manage hazardous wastes, unless excluded by the regulations. This is consistent with Federal requirements. Amendment 5, adopted on May 16, 1984, first required the use of the Uniform Manifest form. The latest federal manifest form was been adopted in Amendment 8.

## SECTION 7. ESTIMATED REGULATED ACTIVITIES

### A. ESTIMATED TYPES AND NUMBER OF REGULATED ACTIVITIES-§§271.6(g)-(h)

The estimated types and numbers of regulated activities in the Commonwealth are presented in Table 3. In addition, the latest available data on annual quantities of hazardous wastes managed in the Commonwealth are presented in Attachment 10.

It is estimated that there are seven mixed radioactive waste generators in Virginia. These include the Virginia Power nuclear reactors in Surry and Louisa counties, the Norfolk Naval Shipyard, as well as hospitals, industry, disposal service companies, and the federal and state agencies.

TABLE 3. ESTIMATED TYPES AND NUMBER OF REGULATED ACTIVITIES

	PERMIT STATUS			
	INTERIM STATUS	PERMITTED		
Large Quantity Generators	NA	NA	347	
Small Quantity/Conditionally Exempt	NA	NA	8164	
Transporters	NA	380	380	
Treatment & Storage Facilities:				
on-site	4	12 (+23 processing)	39	
off-site	1	7	8	
Combustion Facilities:				
on-site	0	4	4	
off-site	2	0	2	
Disposal Facilities:				
on-site	0	0	0	
off-site	0	0	0	
	Closing	Require Post-Closure Permits	Post-Closure Permitted	Total
Land-Disposal Facilities	15	6	15	36

Based on data from the 1996 biennial reports, the estimated quantities of waste managed by Virginia facilities are listed in Table 4.

TABLE 4  
Waste Quantities

Type of Activity	Number of Handlers	Waste Quantities (tons)
Generators (LQG, SQG, CESQG)	7681 (329 TSDs)	57,373*
Transported into the State	n/a	32,840
Transported out of the State	n/a	46,533

*Breakout of Table 4	
Waste Type	Amount (tons)
Only Ignitable	5,169
Only Corrosive	1,446
Only Reactive	582
Only D004-17	3,966
Only D018-43	514
More than one characteristic	17,570
Only F Code	5,157
Only K Code	7,649
Only P Code	0
Only U Code	161
More than one listed code	70
Both Characteristic and Listed	15,088

B. USE OF FEDERAL FORMS - § 271.6(d)

The Department presently requires the use of federal forms and does not intend to publish forms other than those contained within the regulations themselves.

## **Section 8**

### **COPIES OF STATE FORMS**

All forms used by the Commonwealth for hazardous waste management are a part of the regulations themselves or are forms of the USEPA located in Title 40 of the Code of Federal Regulations and are incorporated by reference into the Commonwealth's regulations.

**SECTION 9  
APPENDICES**

ATTACHMENT 1 to the PROGRAM DESCRIPTION  
Organizational Charts: Department of Environmental Quality

ATTACHMENT 2 to the PROGRAM DESCRIPTION  
Virginia Waste Management Act and Other Statutes

ATTACHMENT 3 to the PROGRAM DESCRIPTION  
Virginia Hazardous Waste Management Regulations

ATTACHMENT 4 to the PROGRAM DESCRIPTION  
Hazardous Material Transportation Regulations

ATTACHMENT 5 to the PROGRAM DESCRIPTION  
Corrective Action Self Assessment

ATTACHMENT 6 to the PROGRAM DESCRIPTION  
Enforcement Manual

ATTACHMENT 7 to the PROGRAM DESCRIPTION  
Inspection Checklists

**ATTACHMENT 1 to the PROGRAM DESCRIPTION**  
**Organizational Charts: Department of Environmental Quality**