# Code of Virginia

**(February 23, 2007 amended by 2007 Acts of the Assembly c. 23)**

§ 10.1-1182. Definitions.

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

"Department" means the Department of Environmental Quality.

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

"Environment" means the natural, scenic and historic attributes of the Commonwealth.

"Special order" means an administrative order issued to any party that has a stated duration of not more than twelve months and that may include a civil penalty of not more than $10,000.

§ 10.1-1183. Creation of Department of Environmental Quality; statement of policy.

There is hereby created a Department of Environmental Quality by the consolidation of the programs, functions, staff, facilities, assets and obligations of the following agencies: the State Water Control Board, the Department of Air Pollution Control, the Department of Waste Management, and the Council on the Environment. Wherever in this title and in the Code of Virginia reference is made to the Department of Air Pollution Control, the Department of Waste Management or the Council on the Environment, or any division thereof, it shall mean the Department of Environmental Quality.

It shall be the policy of the Department of Environmental Quality to protect the environment of Virginia in order to promote the health and well-being of the Commonwealth's citizens. The purposes of the Department are:

1. To assist in the effective implementation of the Constitution of Virginia by carrying out state policies aimed at conserving the Commonwealth's natural resources and protecting its atmosphere, land and waters from pollution.

2. To coordinate permit review and issuance procedures to protect all aspects of Virginia's environment.

3. To enhance public participation in the regulatory and permitting processes.

4. To establish and effectively implement a pollution prevention program to reduce the impact of pollutants on Virginia's natural resources.

5. To establish procedures for, and undertake, long-range environmental program planning and policy analysis.

6. To conduct comprehensive evaluations of the Commonwealth's environmental protection programs.

7. To provide increased opportunities for public education programs on environmental issues.

8. To develop uniform administrative systems to ensure coherent environmental policies.

9. To coordinate state reviews with federal agencies on environmental issues, such as environmental impact statements.

10. To promote environmental quality through public hearings and expeditious and comprehensive permitting, inspection, monitoring and enforcement programs, and provide effective service delivery to the regulated community.

11. To advise the Governor and General Assembly, and, on request, assist other officers, employees, and public bodies of the Commonwealth, on matters relating to environmental quality and the effectiveness of actions and programs designed to enhance that quality.

12. To ensure that there is consistency in the enforcement of the laws, regulations and policies as they apply to holders of permits or certificates issued by the Department, whether the owners or operators of such regulated facilities are public sector or private sector entities.

§ 10.1-1184. State Air Pollution Control Board, State Water Control Board, and Virginia Waste Management Board continued.

The State Air Pollution Control Board, State Water Control Board, and Virginia Waste Management Board are continued and shall promote the environmental quality of the Commonwealth. All policies and regulations adopted or promulgated by the State Air Pollution Control Board, State Water Control Board, Virginia Waste Management Board, and the Council on the Environment and in effect on December 31, 1992, shall continue to be in effect until and unless superseded by new policies or regulations. Representatives of the three Boards shall meet jointly at least twice a year to receive public comment and deliberate about environmental issues of concern to the Commonwealth.

§ 10.1-1185. Appointment of Director; powers and duties of Director.

The Department shall be headed by a Director appointed by the Governor to serve at his pleasure for a term coincident with his own. The Director of the Department of Environmental Quality shall, under the direction and control of the Governor, exercise such power and perform such duties as are conferred or imposed upon him by law and shall perform such other duties as may be required of him by the Governor and the following Boards: the State Air Pollution Control Board, the State Water Control Board,

and the Virginia Waste Management Board. The Director or his designee shall serve as executive officer of the aforementioned Boards.

All powers and duties conferred or imposed upon the Executive Director of the Department of Air Pollution Control, the Executive Director of the State Water Control Board, the Administrator of the Council on the Environment, and the Director of the Department of Waste Management are continued and conferred or imposed upon the Director of the Department of Environmental Quality or his designee. Wherever in this title and in the Code of Virginia reference is made to the head of a division, department or agency hereinafter transferred to this Department, it shall mean the Director of the Department of Environmental Quality.

§ 10.1-1186. General powers of the Department.

The Department shall have the following general powers, any of which the Director may delegate as appropriate:

1. Employ such personnel as may be required to carry out the duties of the Department;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, other state agencies and governmental subdivisions of the Commonwealth;

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable;

4. Accept and administer services, property, gifts and other funds donated to the Department;

5. Implement all regulations as may be adopted by the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;

6. Administer, under the direction of the Boards, funds appropriated to it for environmental programs and make contracts related thereto;

7. Initiate and supervise programs designed to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solutions, population and its relation to environmental problems, and other matters concerning environmental quality;

8. Advise and coordinate the responses of state agencies to notices of proceedings by the State Water Control Board to consider certifications of hydropower projects under 33 U.S.C. § 1341;

9. Advise interested agencies of the Commonwealth of pending proceedings when the Department of Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory Commission proceeding or when the Department of Game and Inland Fisheries intervenes in a Federal Energy Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the proceedings;

10. Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the provisions of any law administered by the Boards, the Director or the Department, (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as defined in § 2.2-4001, of the Boards or Director. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in conjunction with issuance of special orders. For purposes of this subdivision, "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board; and

11. Perform all acts necessary or convenient to carry out the purposes of this chapter.

§ 10.1-1186.1. Department to publish toxics inventory.

The Department of Environmental Quality shall publish in March of each year the information reported by industries pursuant to 42 U.S.C. § 11023 in its document known as the "Virginia Toxic Release Inventory." The report shall be (i) organized by chemical, facility and facility location, and standard industrial classification code, and (ii) distributed to newspapers of general circulation and television and radio stations. The report shall include the information collected for the most recent calendar year for which data is available prior to the March publication date.

§ 10.1-1186.2. Supplemental environmental projects.

A. As used in this section, "supplemental environmental project" means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

B. The State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board, or the Director acting on behalf of one of these boards or under his own authority in issuing any administrative order, or any court of competent jurisdiction as provided for under this Code, may, in its or his discretion and with the consent of the person subject to the order, provide for such person to undertake one or more supplemental environmental projects. The project shall have a reasonable geographic nexus to the violation or, if no such project is available, shall advance at least one of the declared objectives of the environmental law or regulation that is the basis of the enforcement action. Performance of such projects shall be enforceable in the same manner as any other provision of the order.

C. The following categories of projects may qualify as supplemental environmental projects, provided the project otherwise meets the requirements of this section: public health, pollution prevention, pollution reduction, environmental restoration and protection, environmental compliance promotion, and emergency planning and preparedness. In determining the appropriateness and value of a supplemental environmental project, the following factors shall be considered by the enforcement authority: net project costs, benefits to the public or the environment, innovation, impact on minority or low income populations, multimedia impact, and pollution prevention. The costs of those portions of a supplemental environmental project that are funded by state or federal low-interest loans, contracts or grants shall be deducted from the net project cost in evaluating the project. In each case in which a supplemental environmental project is included as part of a settlement, an explanation of the project with any appropriate supporting documentation shall be included as part of the case file.

D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

E. Any decision whether or not to agree to a supplemental environmental project is within the sole discretion of the applicable board, official or court and shall not be subject to appeal.

F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable federal law or any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

§ 10.1-1186.2:1. Impact of electric generating facilities.

A. The Department and the State Air Pollution Control Board have the authority to consider the cumulative impact of new and proposed electric generating facilities within the Commonwealth on attainment of the national ambient air quality standards.

B. The Department shall enter into a memorandum of agreement with the State Corporation Commission regarding the coordination of reviews of the environmental impacts of proposed electric generating facilities that must obtain certificates from the State Corporation Commission.

C. Prior to the close of the Commission's record on an application for certification of an electric generating facility pursuant to § 56-580, the Department shall provide to the State Corporation Commission a list of all environmental permits and approvals that are required for the proposed electric generating facility and shall specify any environmental issues, identified during the review process, that are not governed by those permits or approvals or are not within the authority of, and not considered by, the Department or other participating governmental entity in issuing such permits or approvals. The Department may recommend to the Commission that the Commission's record remain open pending completion of any required environmental review, approval or permit proceeding. All agencies of the Commonwealth shall provide assistance to the

Department, as requested by the Director, in preparing the information required by this subsection.

§ 10.1-1186.3. Additional powers of Boards; mediation; alternative dispute resolution.

A. The State Air Pollution Control Board, the State Water Control Board and the Virginia Waste Management Board, in their discretion, may employ mediation as defined in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve underlying issues, reach a consensus or compromise on contested issues. An "appropriate case" means any process related to the development of a regulation or the issuance of a permit in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public interest. The Boards shall consider not using a mediation or dispute resolution proceeding if:

1. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

2. The matter involves or may bear upon significant questions of state policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Board;

3. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

4. The matter significantly affects persons or organizations who are not parties to the proceeding;

5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding cannot provide such a record; and

6. The Board must maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution proceeding would interfere with the Board's fulfilling that requirement.

Mediation and alternative dispute resolution as authorized by this section are voluntary procedures which supplement rather than limit other dispute resolution techniques available to the Boards. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only with the consent and participation of the permit applicant and shall be terminated at the request of the permit applicant.

B. The decision to employ mediation or a dispute resolution proceeding is in a Board's sole discretion and is not subject to judicial review.

C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board, but may be considered by a Board in issuing a permit or promulgating a regulation.

D. Each Board shall adopt rules and regulations, in accordance with the Administrative Process Act, for the implementation of this section. Such rules and regulations shall include: (i) standards and procedures for the conduct of mediation and dispute resolution, including an opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the appointment and function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work product or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where a Board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation.

Nothing in this section shall create or alter any right, action or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with applicable federal law or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

§ 10.1-1186.4. Enforcement powers; federal court.

In addition to the authority of the State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board and the Director to bring actions in the courts of the Commonwealth to enforce any law, regulation, case decision or condition of a permit or certification, the Attorney General is hereby authorized on behalf of such boards or the Director to seek to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure in any action then pending in a federal court in order to resolve a dispute already being litigated in that court by the United States through the Environmental Protection Agency.

§ 10.1-1186.5. Creation of the Low Impact Development Assessment Task Force.

A. The Director of the Department shall appoint a Low Impact Development Assessment Task Force. The task force shall operate as an entity within the Department. The task force shall have 10 members appointed by the Director and shall include a representative of the Department of Conservation and Recreation, the Chesapeake Bay Foundation, the Virginia Farm Bureau Federation, the Home Builders Association of Virginia, the Low Impact Development Coalition, the Virginia Association of Counties, the Virginia Municipal League, and three citizen members not affiliated with the organizations designated in this subsection.

B. The task force shall (i) develop a certification process for low impact development techniques in achieving quantifiable pollution prevention or abatement results, (ii) develop such other guidance for local governments and the general public as necessary to promote a more complete understanding of the most effective use of low impact development techniques, (iii) recommend changes to existing statutes and regulations to facilitate the use of low impact development techniques, and (iv) develop a model ordinance for use by local governments.

C. The task force shall submit a preliminary report to the Director by October 1, 2003, and a final report to the Director by October 1, 2004. The Director shall report to the General Assembly on the activities and recommendations of the task force by November 1 of each year in which he receives a report.

D. For purposes of this section, "low impact development" means a site-specific system of design and development techniques that can serve as an effective, low-cost alternative to existing stormwater and water quality control methods and that will reduce the creation of storm runoff and pollution and potentially reduce the need to treat or mitigate water pollution.

§ 10.1-1187. Provision of the Code continued.

The conditions, requirements, provisions, contents, powers and duties of any section, article, or chapter of the Code in effect on March 31, 1993, relating to agencies consolidated in this chapter shall apply to the Department of Environmental Quality until superseded by new legislation.

§ 10.1-1187.1. Definitions.

"Board or Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.

"Department" means the Department of Environmental Quality.

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

"Environmental Management System" means a comprehensive, cohesive set of documented policies and procedures adopted by a facility or person and used to establish environmental goals, to meet and maintain those goals, to evaluate environmental performance and to achieve measurable or noticeable improvements in environmental performance, through planning, documented management and operational practices, operational changes, self assessments, and management review. The term shall include, but not be limited to, any such system developed in accordance with the International Standards of Operation 14001 standards.

"E2" means an environmental enterprise.

"E3" means an exemplary environmental enterprise.

"E4" means an extraordinary environmental enterprise.

"Facility" means a manufacturing, business, agricultural, or governmental site or installation involving one or more contiguous buildings or structures under common ownership or management.

"Record of sustained compliance" means that the person or facility (i) has no judgment or conviction entered against it, or against any key personnel of the person or facility or any person with an ownership interest in the facility for a criminal violation of environmental protection laws of the United States, the Commonwealth, or any other state in the previous five years; (ii) has been neither the cause of, nor liable for, more than two significant environmental violations in the previous three years; (iii) has no unresolved notices of violations or potential violations of environmental requirements with the Department or one of the Boards; (iv) is in compliance with the terms of any order or decree, executive compliance agreement, or related enforcement measure issued by the Department, one of the Boards, or the U.S. Environmental Protection Agency; and (v) has not demonstrated in any other way an unwillingness or inability to comply with environmental protection requirements.

§ 10.1-1187.2. Virginia Environmental Excellence Program established.

The Department may establish programs to recognize facilities and persons that have demonstrated a commitment to enhanced environmental performance and to encourage innovations in environmental protection.

§ 10.1-1187.3. Program categories and criteria.

A. The Director shall establish different categories of participation and the criteria and benefits for each category. Such categories shall include, but not be limited to: (i) E2 facilities, (ii) E3 facilities, and (iii) E4 facilities.

B. In order to participate as an E2 facility, a person or facility shall demonstrate that it (i) is developing an environmental management system or has initiated implementation of an environmental management system, (ii) has a commitment to pollution prevention and a plan to reduce environmental impacts from its operations, and (iii) has a record of sustained compliance with environmental requirements. To apply to become an E2 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality, (b) an evaluation of the applicant's environmental impacts, (c) the applicant's objectives and targets for addressing significant environmental impacts, and (d) a description of the applicant's pollution prevention program. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E2 facilities may include, but

are not limited to, the following: public recognition of facility performance and reduced fees.

C. In order to participate as an E3 facility, a person or facility shall demonstrate that it has (i) a fully-implemented environmental management system, (ii) a pollution prevention program with documented results, and (iii) a record of sustained compliance with environmental requirements. To apply to become an E3 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality; (b) an evaluation of the applicant's actual and potential environmental impacts; (c) the applicant's objectives and targets for addressing significant environmental impacts; (d) a description of the applicant's pollution prevention program; (e) identification of the applicant's environmental legal requirements; (f) a description of the applicant's environmental management system that identifies roles, responsibilities and authorities, reporting and record-keeping, emergency response procedures, staff training, monitoring, and corrective action processes for noncompliance with the environmental management system; (g) voluntary self-assessments; and (h) procedures for internal and external communications. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E3 facilities may include, but are not limited to, the following: public recognition of facility performance, reduced fees, reduced inspection priority, a single point-of-contact between the facility and the Department, streamlined environmental reporting, reduced monitoring requirements, prioritized permit and permit amendment review, and the ability to implement alternative compliance measures approved by the appropriate Board in accordance with § 10.1-1187.6.

D. In order to participate as an E4 facility, a person or facility shall meet the criteria for participation as an E3 facility, and shall have (i) implemented and completed at least one full cycle of an environmental management system as verified by an unrelated third-party qualified to audit environmental management systems and (ii) committed to measures for continuous and sustainable environmental progress and community involvement. To apply to become an E4 facility, an applicant shall submit (a) the information required to apply to become an E3 facility, (b) documentation evidencing implementation and completion of at least one full cycle of an environmental management system and evidencing review and verification by an unrelated third party, and (c) documentation that the applicant has committed to measures for continuous and sustainable environmental progress and community involvement. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E4 facilities may include all of the incentives available to E3 facilities. Any facility or person that has been accepted into the National Performance Track Programs by the U.S. Environmental Protection Agency shall be deemed to be an E4 facility. If acceptance in the Program is revoked or suspended by the U.S. Environmental Protection Agency, participation as an E4 facility shall also be terminated or suspended.

§ 10.1-1187.4. Procedures for participation.

A. The Director shall develop guidelines and procedures for implementation of the program, including procedures for submitting applications, guidelines for annual reports from participating persons or facilities, and procedures for reviewing program implementation.

B. Upon review of an application, the Director may approve or deny the person's or facility's participation in the appropriate category within the Virginia Environmental Excellence Program. The denial of a person's or facility's participation in the Virginia Environmental Excellence Program shall not be with prejudice or otherwise prevent reapplication by the person or facility. If a participant fails to maintain a record of sustained compliance, fails to resolve an alleged environmental violation within 180 days, or fails to meet the requirements or criteria for participation in the Virginia Environmental Excellence Program or any category within the program, the Director may revoke or suspend their participation in the program or revoke participation in a higher level and approve its participation in a lower level of the program. The Director shall provide reasonable notice of the reasons for the suspension or revocation and allow the participant to respond prior to making such a decision.

C. The Director's decision to approve, deny, revoke, or suspend a person's or facility's participation in any category of the Virginia Environmental Excellence Program is discretionary, shall not be a case decision as defined in § 2.2-4001, and shall be exempt from judicial review.

§ 10.1-1187.5. Reporting.

A. Participants shall submit annual reports in a format and schedule prescribed by the Director, including information on environmental performance relevant to the program.

B. The Department shall submit a report to the Governor and to the members of the House Committee on Agriculture, Chesapeake and Natural Resources and the members of the Senate Committee on Agriculture, Conservation and Natural Resources by December 1 of every even-numbered year, with the last report due on December 1, 2010. The report shall include the information from the participants' reports as well as information on the incentives that have been provided and the innovations that have been developed by the agency and participants.

§ 10.1-1187.6. Approval of alternate compliance methods.

A. To the extent consistent with federal law and notwithstanding any other provision of law, the Air Pollution Control Board, the Waste Management Board, and the State Water Control Board may grant alternative compliance methods to the regulations adopted pursuant to their authorities, respectively, under §§ 10.1-1308, 10.1-1402, and 62.1-44.15 for persons or facilities that have been accepted by the Department as meeting the criteria for E3 and E4 facilities under § 10.1-1187.3, including but not limited to changes to monitoring and reporting requirements and schedules, streamlined submission requirements for permit renewals, the ability to make certain operational changes without

prior approval, and other changes that would not increase a facility's impact on the environment. Such alternative compliance methods may allow alternative methods for achieving compliance with prescribed regulatory standards, provided that the person or facility requesting the alternative compliance method demonstrates that the method will (i) meet the purpose of the applicable regulatory standard, (ii) promote achievement of those purposes through increased reliability, efficiency, or cost effectiveness, and (iii) afford environmental protection equal to or greater than that provided by the applicable regulatory standard. No alternative compliance method shall be approved that would alter an ambient air quality standard, ground water protection standard, or water quality standard and no alternative compliance method shall be approved that would increase the pollutants released to the environment, increase impacts to state waters, or otherwise result in a loss of wetland acreage.

B. Notwithstanding any other provision of law, an alternate compliance method may be approved under this section after at least 30 days' public notice and opportunity for comment, and a determination that the alternative compliance method meets the requirements of this section.

C. Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable federal law or other requirement necessary for the Commonwealth to obtain or retain federal delegation or approval of any regulatory program. Before approving an alternate compliance method affecting any such program, each Board may obtain the approval of the federal agency responsible for such delegation or approval. Any one of the Boards may withdraw approval of the alternate compliance method at any time if any conditions under which the alternate compliance method was originally approved change, or if the recipient has failed to comply with any of the alternative compliance method requirements.

D. Upon approval of the alternative compliance method under this section, the alternative compliance method shall be incorporated into the relevant permits as a minor permit modification with no associated fee. The permits shall also contain any such provisions that shall go into effect in the event that the participant fails to fulfill its obligations under the variance, or is removed from the program for reasons specified by the Director under subsection B of § 10.1-1187.4.

§ 10.1-1187.7. Governor's Environmental Excellence Awards.

The Governor's Environmental Excellence Awards shall be awarded each year to recognize participants in the Virginia Environmental Excellence Program that have demonstrated extraordinary leadership, innovation, and commitment to implementation of pollution prevention practices and other efforts to reduce environmental impacts and improve Virginia's natural environment.

§ 10.1-1188. State agencies to submit environmental impact reports on major projects.

A. All state agencies, boards, authorities and commissions or any branch of the state government shall prepare and submit an environmental impact report to the Department on each major state project.

"Major state project" means the acquisition of an interest in land for any state facility construction, or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning, which costs $100,000 or more. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2 or Chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall authority include any housing development or redevelopment authority established pursuant to state law. For the purposes of this chapter, branch of state government shall not include any county, city or town of the Commonwealth.

Such environmental impact report shall include, but not be limited to, the following:

1. The environmental impact of the major state project, including the impact on wildlife habitat;

2. Any adverse environmental effects which cannot be avoided if the major state project is undertaken;

3. Measures proposed to minimize the impact of the major state project;

4. Any alternatives to the proposed construction; and

5. Any irreversible environmental changes which would be involved in the major state project.

For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

B. For purposes of this chapter, this subsection shall not apply to the review of highway and road construction projects or any part thereof. The Secretaries of Transportation and Natural Resources shall jointly establish procedures for review and comment by state natural and historic resource agencies of highway and road construction projects. Such procedures shall provide for review and comment on appropriate projects and categories of projects to address the environmental impact of the project, any adverse environmental effects which cannot be avoided if the project is undertaken, the measures proposed to minimize the impact of the project, any alternatives to the proposed construction, and any irreversible environmental changes which would be involved in the project.

§ 10.1-1189. Department to review report and make statement to Governor.

Within sixty days of the receipt of the environmental impact report by the Department, the Department shall review and make a statement to the Governor commenting on the environmental impact of each major state facility. The statement of the Department shall be available to the General Assembly and to the general public at the time of submission by the Department to the Governor.

§ 10.1-1190. Approval of Governor required for construction of facility.

The State Comptroller shall not authorize payments of funds from the state treasury for a major state project unless the request is accompanied by the written approval of the Governor after his consideration of the comments of the Department on the environmental impact of the facility. This section shall not apply to funds appropriated by the General Assembly prior to June 1, 1973, or any reappropriation of such funds.

§ 10.1-1191. Development of procedures, etc., for administration of chapter.

The Department shall, in conjunction with other state agencies, coordinate the development of objectives, criteria and procedures to ensure the orderly preparation and evaluation of environmental impact reports required by this article. These procedures shall provide for submission of impact statements in sufficient time to permit any modification of the major state project which may be necessitated because of environmental impact.

§ 10.1-1192. Cooperation of state agencies.

All departments, commissions, boards, authorities, agencies, offices and institutions within any branch of the state government shall cooperate with the Department in carrying out the purposes of this article.

§ 10.1-1193. Watershed planning; watershed permitting; promotion and coordination.

A. The Department, with the assistance of the Watershed Planning and Permitting Coordination Task Force, shall undertake such efforts it deems necessary and appropriate to coordinate the watershed-level activities conducted by state and local agencies and authorities and to foster the development of watershed planning by localities. To aid in the coordination and promotion of these activities, the Department shall to the extent practicable in its discretion:

1. Promote and coordinate state and local agencies' and authorities' efforts to undertake watershed planning and watershed permitting;

2. Acquire, maintain and make available informational resources on watershed planning;

3. Promote the continuation of research and dialogue on what is entailed in watershed planning and watershed permitting;

4. Identify sources and methods for providing local officials with technical assistance in watershed planning;

5. Encourage and foster training of local officials in watershed planning;

6. Develop recommendations for needed regulatory and legislative changes to assist local governments in developing and implementing watershed planning;

7. Identify barriers to watershed planning and watershed permitting, including state policies, regulations and procedures, and recommend alternatives to overcome such obstacles; and

8. Develop, foster and coordinate approaches to watershed permitting.

B. The Department shall report annually its watershed planning and permitting activities, findings and recommendations and those of the Task Force to the Governor and the General Assembly.

C. Nothing in this article shall be construed as requiring additional permitting or planning requirements on agricultural or forestal activities.

§ 10.1-1194. Watershed Planning and Permitting Coordination Task Force created; membership; duties.

A. There is hereby created the Watershed Planning and Permitting Coordination Task Force, which shall be referred to in this article as the Task Force. The Task Force shall be composed of the Directors, or their designees, of the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Forestry, the Department of Mines, Minerals and Energy, and the Commissioner, or his designee, of the Department of Agriculture and Consumer Services.

B. The Task Force shall meet at least quarterly on such dates and times as the members determine. A majority of the Task Force shall constitute a quorum.

C. The Task Force shall undertake such measures and activities it deems necessary and appropriate to see that the functions of the agencies represented therein, and to the extent practicable of other agencies of the Commonwealth, and the efforts of state and local agencies and authorities in watershed planning and watershed permitting are coordinated and promoted.

§ 10.1-1195. Watershed planning and permitting advisory panels.

The Task Force may name qualified persons to advisory panels to assist it in carrying out its responsibilities. Panels shall include members representing different areas of interest and expertise in watershed planning and watershed permitting including representatives of local governments, planning district commissions, industry, development interests,

education, environmental and public interest groups and the scientific community found in Virginia universities.

§ 10.1-1196. Guiding definition and principles.

A. The Department, the Task Force and any advisory panels appointed by the Task Force shall be guided by the following definition of watershed planning: "Watershed planning" is the process of studying the environmental and land use features of a watershed to identify those areas that should be protected and preserved, measures to be utilized to protect such areas, and the character of development in order to avoid and minimize disruption of natural systems. Its focus is not on directing development to particular parcels of land but rather to identify critical resources, and measures to protect those resources, so that development, when it does occur, will not negatively impact water resources. In so doing watershed planning uses and protects ecological processes to lessen the need for structural control methods that require capital costs and maintenance. By including consideration of a watershed and its characteristics, cumulative impacts and interjurisdictional issues are more effectively managed than when solely relying on single-site-permit approaches. Watershed planning can be an important tool for maintaining environmental integrity, economic development and watershed permitting.

B. The Department, the Task Force and any advisory panels appointed by the Task Force shall be guided by the principles contained in the following statement: Stream systems tend to reflect the character of the watershed they drain. Unchecked physical conversion in a watershed accompanying urbanization leads to degraded streams and wetlands. As urbanization continues to spread across the state, natural vegetation, slope and water retention characteristics are replaced by impervious surfaces disrupting the dynamic balance of the natural hydrologic cycle. Poorly planned development can increase peak storm flows and runoff volume, lower water quality and aesthetics, and cause flooding and degradation of downstream communities and ecosystems.

§ 10.1-1197. Cooperation of state agencies.

All agencies of the Commonwealth shall cooperate with the Department and the Task Force and, upon request, assist the Department and the Task Force in the performance of their efforts in coordinating and promoting watershed planning and watershed permitting.

§ 10.1-1197.1. Definitions.

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

"Fund" means the Small Business Environmental Compliance Assistance Fund.

"Small business" means a business located in Virginia that (i) employs 100 or fewer people and (ii) is a small business concern as defined in the federal Small Business Act (15 U.S.C. § 631 et seq.) as amended.

"Voluntary pollution prevention measures" means operational or equipment changes that meet the definition of pollution prevention contained in § 10.1-1425.10 and are not otherwise required by law.

§ 10.1-1197.2. Small Business Environmental Compliance Assistance Fund established; administration; collection of money.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Small Business Environmental Compliance Assistance Fund, hereafter referred to as the "Fund." The Fund shall be comprised of (i) moneys appropriated to the Fund by the General Assembly, (ii) receipts by the Fund from loans made by it, (iii) all income from the investment of moneys held by the Fund, (iv) any moneys transferred from the Virginia Environmental Emergency Response Fund as authorized by § 10.1-2502, and (v) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes provided in this article. Any moneys appropriated or otherwise credited to the Fund that were received by the Department pursuant to Title V (42 U.S.C. § 7661 et seq.) of the federal Clean Air Act shall be used solely for purposes associated with Title V of the federal Clean Air Act. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department. The Fund shall be administered and managed by the Department, or any entity operating under a contract or agreement with the Department.

B. The Department, or its designated agent, is empowered to collect moneys due to the Fund. Proceedings to recover moneys due to the Fund may be instituted in the name of the Fund in any appropriate circuit court.

§ 10.1-1197.3. Purposes of Fund; loans to small businesses; administrative costs.

A. Moneys in the Fund shall be used to make loans or to guarantee loans to small businesses for the purchase and installation of environmental pollution control and prevention equipment certified by the Department as meeting the following requirements:

1. The air pollution control equipment is needed by the small business to comply with the federal Clean Air Act (42 U.S.C. § 7401 et seq.); or

2. The pollution control equipment will allow the small business to implement voluntary pollution prevention measures.

Moneys in the Fund may also be used to make loans or to guarantee loans to small businesses for the installation of voluntary agricultural best management practices, as defined in § 58.1-339.3.

B. The Department or its designated agent shall determine the terms and conditions of any loan. All loans shall be evidenced by appropriate security as determined by the Department or its designated agent. The Department, or its agent, may require any documents, instruments, certificates, or other information deemed necessary or convenient in connection with any loan from the Fund.

C. A portion of the Fund balance may be used to cover the reasonable and necessary costs of administering the Fund. Unless otherwise authorized by the Governor or his designee, the costs of administering the Fund shall not exceed a base year amount of $65,000 per year, using fiscal year 2000 as the base year, adjusted annually by the Consumer Price Index.

D. The Fund shall not be used to make loans to small businesses for the purchase and installation of equipment needed to comply with an enforcement action by the Department, the State Air Pollution Control Board, the State Water Control Board, or the Virginia Waste Management Board.

§ 10.1-1197.4. Annual audit.

The Auditor of Public Accounts shall annually audit the accounts of the Fund when the records of the Department are audited.

§ 10.1-1198. Voluntary environmental assessment privilege.

A. For purposes of this chapter, unless the context requires a different meaning:

"Environmental assessment" means a voluntary evaluation of activities or facilities or of management systems related to such activities or facilities that is designed to identify noncompliance with environmental laws and regulations, promote compliance with environmental laws and regulations, or identify opportunities for improved efficiency or pollution prevention. An environmental assessment may be conducted by the owner or operator of a facility or an independent contractor at the request of the owner or operator.

"Document" means information collected, generated or developed in the course of, or resulting from, an environmental assessment, including but not limited to field notes, records of observation, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, videotape, computer-generated or electronically recorded information, maps, charts, graphs and surveys. "Document" does not mean information generated or developed before the commencement of a voluntary environmental assessment showing noncompliance with environmental laws or regulations or demonstrating a clear, imminent and substantial danger to the public health or environment.

B. No person involved in the preparation of or in possession of a document shall be compelled to disclose such document or information about its contents, or the details of its preparation. Such a document, portion of a document or information is not admissible

without the written consent of the owner or operator in an administrative or judicial proceeding and need not be produced as a result of an information request of the Department or other agency of the Commonwealth or political subdivision. This privilege does not extend to a document, portion of a document or information that demonstrates a clear, imminent and substantial danger to the public health or the environment or to a document or a portion of a document required by law or prepared independently of the voluntary environmental assessment process. This privilege does not apply to a document or portion of a document collected, generated or developed in bad faith, nor does it alter, limit, waive or abrogate any other statutory or common law privilege.

C. A person or entity asserting a voluntary environmental assessment privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of a document, portion of a document, or information has the burden of proving the applicability of an exception in subsection B to the voluntary environmental assessment privilege. Upon a showing, based upon independent knowledge, by any party to: (i) an informal fact-finding proceeding held pursuant to § 2.2-4019 at which a hearing officer is present; (ii) a formal hearing pursuant to § 2.2-4020; or (iii) a judicial proceeding that probable cause exists to believe that an exception listed in subsection B to the voluntary environmental assessment privilege is applicable to all or a portion of a document or information, the hearing officer or court may have access to the relevant portion of such document or information for the purposes of an in camera review only to determine whether such exception is applicable. The court or hearing examiner may have access to the relevant portion of a document under such conditions as may be necessary to protect its confidentiality. A moving party who obtains access to the document or information may not divulge any information from the document or other information except as specifically allowed by the hearing examiner or the court.

§ 10.1-1199. Immunity against administrative or civil penalties for voluntarily disclosed violation.

To the extent consistent with requirements imposed by federal law, any person making a voluntary disclosure of information to a state or local regulatory agency regarding a violation of an environmental statute, regulation, permit or administrative order shall be accorded immunity from administrative or civil penalty under such statute, regulation, permit or administrative order. A disclosure is voluntary if (i) it is not otherwise required by law, regulation, permit or administrative order, (ii) it is made promptly after knowledge of the violation is obtained through a voluntary environmental assessment, and (iii) the person making the disclosure corrects the violation in a diligent manner in accordance with a compliance schedule submitted to the appropriate state or local regulatory agencies demonstrating such diligence. Immunity shall not be accorded if it is found that the person making the voluntary disclosure has acted in bad faith. This section does not bar the institution of a civil action claiming compensation for injury to person or property against an owner or operator.

§§ 10.1-1200. through 10.1-1212.

Repealed by Acts 1992, c. 887.

§§ 10.1-1213. through 10.1-1221.

Repealed by Acts 1992, cc. 464 and 887.

§ 10.1-1230. Definitions.

As used in this chapter:

"Authority" means the Virginia Resources Authority.

"Bona fide prospective purchaser" means a person who acquires ownership, or proposes to acquire ownership of, real property after the release of hazardous substances occurred.

"Brownfield" means real property; the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

"Cost" as applied to any project financed under the provisions of this chapter, means the reasonable and necessary costs incurred for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications; architectural, engineering, financial, legal or other special services; site assessments, remediation, containment, and demolition or removal of existing structures; the costs of acquisition of land and any buildings and improvements thereon, including the discharge of any obligation of the seller of such land, buildings or improvements; labor; materials, machinery and equipment; the funding of accounts and reserves that the Authority may require; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred prior to completion of the project, and the cost of other items that the Authority determines to be reasonable and necessary.

"Department" means the Department of Environmental Quality.

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

"Fund" means the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund.

"Innocent land owner" means a person who holds any title, security interest or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision of the Commonwealth created by the

General Assembly or otherwise created pursuant to the laws of the Commonwealth or any combination of the foregoing.

"Partnership" means the Virginia Economic Development Partnership.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, public service authority, or any other legal entity.

"Project" means all or any part of the following activities necessary or desirable for the restoration and redevelopment of a brownfield site: (i) environmental or cultural resource site assessments, (ii) monitoring, remediation, cleanup, or containment of property to remove hazardous substances, hazardous wastes, solid wastes or petroleum, (iii) the lawful and necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for economic development, and (v) development of a remediation and reuse plan.

§ 10.1-1231. Brownfield restoration and land renewal policy and programs.

It shall be the policy of the Commonwealth to encourage remediation and restoration of brownfields by removing barriers and providing incentives and assistance whenever possible. The Department of Environmental Quality and the Economic Development Partnership and other appropriate agencies shall establish policies and programs to implement these policies, including a Voluntary Remediation Program, the Brownfields Restoration and Redevelopment Fund, and other measures as may be appropriate.

§ 10.1-1232. Voluntary Remediation Program.

A. The Virginia Waste Management Board shall promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes, or petroleum. The regulations shall apply where remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The regulations shall provide for the following:

1. The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal standards for soil, groundwater and sediments, taking into consideration scientific information regarding the following: (i) protection of public health and the environment,

(ii) the future industrial, commercial, residential, or other use of the property to be remediated and of surrounding properties, (iii) reasonably available and effective remediation technology and analytical quantitation technology, (iv) the availability of institutional or engineering controls that are protective of human health or the environment, and (v) natural background levels for hazardous constituents;

2. The establishment of procedures that minimize the delay and expense of the remediation, to be followed by a person volunteering to remediate a release and by the Department in processing submissions and overseeing remediation;

3. The issuance of certifications of satisfactory completion of remediation, based on then-present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the Department determines that no further action is required;

4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law; and

5. Registration fees to be collected from persons conducting voluntary remediation to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of $5,000 or one percent of the cost of the remediation.

B. Persons conducting voluntary remediations pursuant to an agreement with the Department entered into prior to the promulgation of those regulations may elect to complete the cleanup in accordance with such an agreement or the regulations.

C. Certification of satisfactory completion of remediation shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 13 (§ 10.1-1300 et seq.) of this title, or any other applicable law.

D. At the request of a person who owns, operates, holds a security interest in or contracts for the purchase of property from which the contamination to be voluntarily remediated originates, the Department is authorized to seek temporary access to private and public property not owned by such person conducting the voluntary remediation as may be reasonably necessary for such person to conduct the voluntary remediation. Such request shall include a demonstration that the person requesting access has used reasonable effort to obtain access by agreement with the property owner. Such access, if granted, shall be granted for only the minimum amount of time necessary to complete the remediation and shall be exercised in a manner that minimizes the disruption of ongoing activities and compensates for actual damages. The person requesting access shall reimburse the Commonwealth for reasonable, actual and necessary expenses incurred in seeking or obtaining access. Denial of access to the Department by a property owner creates a rebuttable presumption that such owner waives all rights, claims and causes of action against the person volunteering to perform remediation for costs, losses or damages related to the contamination as to claims for costs, losses or damages arising after the date

of such denial of access to the Department. A property owner who has denied access to the Department may rebut the presumption by showing that he had good cause for the denial or that the person requesting that the Department obtain access acted in bad faith.

§ 10.1-1233. Amnesty for voluntary disclosure and restoration of brownfield sites.

The Director may, consistent with programs developed under the federal acts, provide incentives for the voluntary disclosure of brownfield sites and related information regarding potential or known contamination at that site. To the extent consistent with federal law, any person making a voluntary disclosure regarding real or potential contamination at a brownfield site shall not be assessed an administrative or civil penalty under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law. A disclosure is voluntary if it is not otherwise required by law, regulation, permit or administrative order and the person making the disclosure adopts a plan to market for redevelopment or otherwise ensure the timely remediation of the site. Immunity shall not be accorded if it is found that the person making the voluntary disclosure has acted in bad faith.

§ 10.1-1234. Limitations on liability.

A. The Director may, consistent with programs developed under the federal acts, make a determination to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law.

B. A bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (iv) the person does not impede the performance of any response action. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

C. An innocent land owner who holds title, security interest or any other interest in a brownfield site shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et

seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person made all appropriate inquiries into the previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law, (iv) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (v) the person does not impede the performance of any response action and if either (a) at the time the person acquired the interest, he did not know and had no reason to know that any hazardous substances had been or were likely to have been disposed of on, in, or at the site, or (b) the person is a government entity that acquired the site by escheat or through other involuntary transfer or acquisition. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

D. A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from real property that is not owned by that person shall not be considered liable for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if the person did not cause, contribute, or consent to the release or threatened release, the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, and if such person provides full cooperation, assistance and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

E. The provisions of this section shall not otherwise limit the authority of the Department, the State Water Control Board, the Virginia Waste Management Board, or the State Air Pollution Control Board to require any person responsible for the contamination or pollution to contain or clean up sites where solid or hazardous waste or other substances have been improperly managed.

§ 10.1-1235. Limitation on liability at remediated properties under the jurisdiction of the Comprehensive Environmental Response, Compensation and Liability Act.

A. Any person not otherwise liable under state law or regulation, who acquires any title, security interest, or any other interest in property located in the Commonwealth listed on the National Priorities List under the jurisdiction of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. § 9601 et seq.), after the property has been remediated to the satisfaction of the Administrator of the United

States Environmental Protection Agency, shall not be subject to civil enforcement or remediation action under this chapter, Chapter 13 (§ 10.1-1300 et seq.) of this title, the State Water Control Law (§ 62.1-44.2 et seq.), or any other applicable state law, or to private civil suit, related to contamination that was the subject of the satisfactory remediation, existing at or immediately contiguous to the property prior to the person acquiring title, security interest, or any other interest in such property.

B. Any person who acquires any title, security interest, or other interest in property from a person described in subsection A shall not be subject to enforcement or remediation actions or private civil suits to the same extent as the person provided in subsection A.

C. A person who holds title, a security interest, or any other interest in property prior to the property being acquired by a person described in subsection A shall not be relieved of any liability or responsibility by reacquiring title, a security interest, or any other interest in the property.

D. The provisions of this chapter shall not be construed to limit the statutory or regulatory authority of any state agency or to limit the liability or responsibility of any person when the activities of that person alter the remediation referred to in subsection A. The provisions of this section shall not modify the liability, if any, of a person who holds title, a security interest, or any other interest in property prior to satisfactory remediation or the liability of a person who acquires the property after satisfactory remediation for damage caused by contaminants not included in the remediation.

§ 10.1-1236. Access to abandoned brownfield sites.

A. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned brownfield site in order to investigate contamination, to abate any hazard caused by the improper management of substances within the jurisdiction of the Board, or to remediate the site. The petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner, operator or other responsible party and (ii) a plan approved by the Director and which is consistent with applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be considered a case decision as defined by § 2.2-4001.

B. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or state law or regulation who performs any investigative, abatement or remediation activities pursuant to this section shall not become subject to civil enforcement or remediation action under Chapter 14 (§ 10.1-1400 et seq.) of this title or other applicable state laws or to private civil suits related to contamination not caused by its investigative, abatement or remediation activities.

C. This section shall not in any way limit the authority of the Virginia Waste Management Board, Director, or Department otherwise created by Chapter 14 (§ 10.1-1400 et seq.) of this title.

§ 10.1-1237. Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund established; uses.

A. There is hereby created and set apart a special, permanent, perpetual and nonreverting fund to be known as the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund for the purposes of promoting the restoration and redevelopment of brownfield sites and to address environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The Fund shall consist of sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants, awards or other forms of financial assistance received by the Commonwealth.

B. The Authority shall administer and manage the Fund and establish the interest rates and repayment terms of such loans in accordance with a memorandum of agreement with the Partnership. The Partnership shall direct the distribution of loans or grants from the Fund to particular recipients based upon guidelines developed for this purpose. With approval from the Partnership, the Authority may disperse monies from the Fund for the payment of reasonable and necessary costs and expenses incurred in the administration and management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans for its management services.

C. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check and signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be made by the Authority upon written request signed by the Executive Director of the Virginia Economic Development Partnership.

D. The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

E. The Partnership may approve grants to local governments for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The grants may be used to pay the reasonable and necessary costs associated with the restoration and redevelopment of a brownfield site for (i) environmental and cultural resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan. The Partnership may establish such terms and conditions as it deems appropriate and shall evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority shall disburse grants from the Fund in accordance with a written request from the Partnership.

F. The Authority may make loans to local governments, public authorities, corporations and partnerships to finance or refinance the cost of any brownfield restoration or remediation project for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to economic development prospects. The loans shall be used to pay the reasonable and necessary costs related to the restoration and redevelopment of a brownfield site for (i) environmental and cultural resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan.

The Partnership shall designate in writing the recipient of each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

G. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary

or convenient. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant perform any of the following:

1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government, and (iii) any amounts necessary to create and maintain any required reserve.

2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government.

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

4. Create and maintain other special funds as required by the Authority.

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund;

b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, for the purpose of financing, and the pledging of the revenues from such combined projects and undertakings to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

d. The maintenance, replacement, renewal, and repair of the project; and

e. The procurement of casualty and liability insurance.

6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time during the term of the loan.

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default.

H. All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

I. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

J. The Partnership, through its Director, shall have the authority to access and release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the balance of the Fund. If the Partnership, through its Director, requests a disbursement in an amount exceeding the current Fund balance, the disbursement shall require the written approval of the Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including, but not limited to, personnel, administrative and equipment costs and expenses directly incurred by the Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the Partnership.

The Authority is empowered at any time and from time to time to pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

K. The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

L. The Authority may, with the approval of the Partnership, pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

M. The Partnership, in consultation with the Department of Environmental Quality, shall develop guidance governing the use of the Fund and including criteria for project eligibility that considers the extent to which a grant or loan will facilitate the use or reuse of existing infrastructure, the extent to which a grant or loan will meet the needs of a community that has limited ability to draw on other funding sources because of the small size or low income of the community, the potential for redevelopment of the site, the economic and environmental benefits to the surrounding community, and the extent of the perceived or real environmental contamination at the site. The guidelines shall include a requirement for a one-to-one match by the recipient of any grant made by or from the Fund.

§ 10.1-1300. [Air Pollution]

§ 10.1-1400. Definitions.

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

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

"Board" means the Virginia Waste Management Board.