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.

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

"Department" means the Department of Environmental Quality.

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

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

1. The full name, business address, and social security number of all key personnel;

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

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

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

5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; or violation of antitrust laws;

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

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

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

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

"Equity" includes both legal and equitable interests.

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

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

"Hazardous substance" means a substance listed under United States Public Law 96-510, entitled the Comprehensive Environmental Response Compensation and Liability Act.

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

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

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

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

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would be classified as a hazardous waste, including but not limited to, nickel, cadmium, mercuric oxide, manganese, zinc-carbon or lead batteries; solvent-based paint, paint thinner, paint strippers, or other paint solvents; any product containing trichloroethylene, toxic art supplies, used motor oil and unusable gasoline or kerosene, fluorescent or high intensity light bulbs, ammunition, fireworks, banned pesticides, or restricted-use pesticides as defined in § 3.1-249.27. All empty

household product containers and any household products in legal distribution, storage or use shall not be considered household hazardous waste.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the Director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Securities Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

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

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

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

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

"Radioactive waste" or "nuclear waste" includes:

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

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

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

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

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

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

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and paper which are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

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

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

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

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

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

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.

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

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

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

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

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

"Waste management" means the collection, source separation, storage, transportation, transfer, processing, treatment and disposal of waste or resource recovery.

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

§ 10.1-1401. Virginia Waste Management Board continued.

A. The Virginia Waste Management Board is continued and shall consist of seven Virginia residents appointed by the Governor. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those which may be required by federal statute or regulations of the United States Environmental Protection Agency. Upon initial appointment, three members shall be appointed for four-year terms, two for three-year terms, and two for two-year terms. Thereafter, all members shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled by the Governor for the unexpired portion of the term.

B. The Board shall adopt rules and procedures for the conduct of its business.

C. The Board shall elect a chairman from among its members.

D. A quorum shall consist of four members. The decision of a majority of those present and voting shall constitute a decision of the Board; however, a vote of the majority of the Board membership is required to constitute a final decision on certification of site approval. Meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request of any two members. All members shall be notified of the time and place of any meeting at least five days in advance of the meeting.

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.

2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.

3. Provide technical assistance and advice concerning all aspects of waste management.

4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.

5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.

6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.

7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.

8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.

9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.

10. Apply for federal funds and transmit such funds to appropriate persons.

11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.

13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.

14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.

15a. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the Board pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.

15b. Collect fees from large quantity generators of hazardous wastes.

16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste: (i) permit application fees sufficient to defray only costs related to the issuance, reissuance, amendment or modification of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to issue, reissue, amend or modify such permits and (ii) annual fees established pursuant to § 10.1-1402.1:1. All such fees received by the Board shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

18. Make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources and the environment from the release or imminent threat of release of waste.

19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.

20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and for investigations to identify parties responsible for such mismanagement.

21. Abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.

22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed radioactive waste.

23. (Expires July 1, 2012) Adopt regulations concerning the criteria and standards for removal of mercury switches by vehicle demolishers.

§ 10.1-1402.01. Further duties of Board; localities particularly affected.

After June 30, 1994, before promulgating any regulation under consideration or granting any variance to an existing regulation, or issuing any treatment, storage, or disposal permit, except for an emergency permit, if the Board finds that there are localities particularly affected by the regulation, variance or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the location and type of waste treated, stored or disposed.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board for at least fifteen days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material environmental impact which

would not be experienced by other localities. For the purposes of this section, the transportation of waste shall not constitute a material environmental impact.

§ 10.1-1402.1. Permit fee regulations.

Regulations promulgated by the Board which establish a permit fee assessment and collection system pursuant to subdivisions 15a, 15b and 16 of § 10.1-1402 shall be governed by the following:

1. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. No fees shall be charged for minor modifications or minor amendments to such permits. For purposes of this subdivision, "minor permit modifications" or "minor amendments" means specific types of changes, defined by the Board, that are made to keep the permit current with routine changes to the facility or its operation and that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

2. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

4. Fees collected pursuant to subdivisions 15a, 15b or 16 of § 10.1-1402 shall not supplant or reduce in any way the general fund appropriation to the Board.

5. These permit fees shall be collected in order to recover a portion of the agency's costs associated with (i) the processing of an application to issue, reissue, amend or modify permits, which the Board has authority to issue for the purpose of more efficiently and expeditiously processing and maintaining permits and (ii) the inspections necessary to assure the compliance of large quantity generators of hazardous waste. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

§ 10.1-1402.1:1. Annual fees for nonhazardous solid waste management facilities.

A. In addition to the permit fees assessed and collected pursuant to § 10.1-1402.1, the Board shall collect an annual fee from any person operating a sanitary landfill or other facility permitted under this chapter for the disposal, storage, or treatment of nonhazardous solid waste. The fees shall be exempt from statewide indirect cost charged and assessed by the Department of Accounts. Annual fees shall reflect the time and complexity of inspecting and monitoring the different categories of facilities. Any annual fee that is based on volume shall be calculated using the tonnage reported by each facility pursuant to § 10.1-1413.1 for the preceding year. The annual fee shall be assessed as follows:

1. Noncaptive industrial landfills $8,000

2. Construction and demolition debris landfills $4,000

3. Sanitary landfills shall be assessed a fee based on their annual tonnage as follows:

Annual Tonnage	Base Fee	Fee per ton over base fee
Up to 10,000	$ 1,000	
10,001 to 100,000	$ 1,000	$.09
100,001 to 250,000	$10,000	$.09
250,001 to 500,000	$23,500	$.075
500,001 to 1,000,000	$42,250	$.06
1,000,001 to 1,500,000	$72,250	$.05
Over 1,500,000	$97,250	$.04

4. Incinerators and energy recovery facilities shall be assessed a fee based upon their annual tonnage as follows:

Annual Tonnage	Fee
10,000 or less	$ 2,000
10,001 to 50,000	$ 3,000
50,001 to 100,000	$ 4,000
100,001 or more	$ 5,000

5.Other types of facilities shall be assessed an annual fee as follows:

Composting	$ 500
Regulated medical waste	$ 1,000
Materials recovery	$ 2,000
Transfer station	$ 2,000
Facilities in post-closure care	$ 500

B. The Board shall by regulation prescribe the manner and schedule for remitting fees imposed by this section and may allow for the quarterly payment of any such fees. The payment of any annual fee amounts owed shall be deferred until January 1, 2005, if the person subject to those fees submits a written request to the Department prior to October 1, 2004. The selection of this deferred payment option shall not reduce the amount owed.

C. The regulation shall include provisions allowing the Director to waive or reduce fees assessed during a state of emergency or for waste resulting from emergency response actions.

D. The Board may promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits and shall establish criteria, by regulation, to provide for reductions in the annual fee amount assessed for facilities based upon acceptance into the Department's programs to recognize excellent environmental performance.

E. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

§ 10.1-1402.2. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Waste Management Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to subdivision 16 of § 10.1-1402 shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under subdivision 16 of § 10.1-1402 under the direction of the Director.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

§ 10.1-1402.3. Conformance with federal requirements.

Notwithstanding the provisions of this article, any fee system developed by the Board may be modified by regulation promulgated by the Board, as may be necessary to conform with the requirements of federal acts and any regulations promulgated thereunder. Any modification imposed under this section shall be submitted to the members of the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance.

§ 10.1-1403. Advisory committees.

The Governor shall appoint such advisory committees as he may deem necessary to aid in the development of an effective waste management program.

§ 10.1-1404. Department continued; general powers.

A. The Department of Waste Management is continued. The Department shall be headed by a Director, who shall be appointed by the Governor to serve at his pleasure for a term coincident with his own or until a successor shall be appointed and qualified.

B. In addition to the powers designated elsewhere in this chapter, the Department shall have the power to:

1. Administer the policies and regulations established by the Board pursuant to this chapter;

2. Employ such personnel as may be required to carry out the purposes of this chapter;

3. 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 state agencies and governmental subdivisions of the Commonwealth; and

4. Provide upon request and without charge, technical assistance to local governing bodies regarding stockpiling of tires pursuant to its authority in this chapter to promote resource conservation and resource recovery systems. The governing body of any county, city or town may adopt an ordinance regulating the stockpiling of tires, including but not limited to, the location of such stockpiles and the number of tires to be deposited at the site.

§ 10.1-1405. Powers and duties of Director.

A. The Director, under the direction and control of the Secretary of Natural Resources, shall exercise such powers and perform such duties as are conferred or imposed upon him by law and shall perform any other duties required of him by the Governor or the Board.

B. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulation.

The Director shall be vested with all the authority of the Board when it is not in session, subject to such regulations as may be prescribed by the Board.

C. The Director shall serve as the liaison with the United States Department of Energy on matters concerning the siting of high-level radioactive waste repositories, pursuant to the terms of the Nuclear Waste Policy Act of 1982.

D. The Director shall obtain a criminal records check pursuant to § 19.2-389 of key personnel listed in the disclosure statement when the Director determines, in his sole discretion, that such a records check will serve the purposes of this chapter.

§ 10.1-1406. Exemptions from liability; expedited settlements.

A. No person shall be liable under the provisions of subdivision 19 of § 10.1-1402 for cleanup or to reimburse the Virginia Environmental Emergency Response Fund if he can establish by a preponderance of the evidence that the violation and the damages resulting therefrom were caused solely by:

1. An act of God;

2. An act of war;

3. An act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) he exercised due care with respect to the hazardous waste or hazardous substance concerned, taking into consideration the characteristics of such hazardous waste or hazardous substance, in light of all relevant facts and circumstances and (ii) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

4. Any combination of subdivisions 1 through 3 of this section. For purposes of this section, the term "contractual arrangement" shall have the meaning ascribed to it in 42 U.S.C. § 9601(35).

B. The Board may, consistent with programs developed under the federal acts, expedite a determination to limit the liability of innocent landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup which may be required pursuant to this chapter.

§ 10.1-1406.1. Access to abandoned waste sites.

A. For the purposes of this section, "abandoned waste site" means a waste site for which (i) there has not been adequate remediation or closure as required by Chapter 14 (§ 10.1-1400 et seq.) of this title, (ii) adequate financial assurances as required by § 10.1-1410 or § 10.1-1428 are not provided, and (iii) the owner, operator, or other person responsible

for the cost of cleanup or remediation under state or federal law or regulation cannot be located.

B. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned waste 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.

C. 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 this chapter or other applicable state laws or to private civil suits related to contamination not caused by its investigative, abatement or remediation activities.

D. This section shall not in any way limit the authority of the Board, Director, or Department otherwise created by Chapter 14 of this title.

§ 10.1-1406.2. Conditional exemption for coal and mineral mining overburden or solid waste.

The provisions of this chapter shall not apply to coal or mineral mining overburden returned to the mine site or solid wastes from the extraction, beneficiation, and processing of coal or minerals that are managed in accordance with requirements promulgated by the Department of Mines, Minerals and Energy.

§ 10.1-1407.

§ 10.1-1407.1. Notification of local government of violation.

Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

§ 10.1-1408.

Repealed by Acts 1988, cc. 696, 891.

§ 10.1-1408.1. Permit required; open dumps prohibited.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.

B. No application for (i) a new solid waste management facility permit or (ii) application for a permit amendment or variance allowing a category 2 landfill, as defined in this section, to expand or increase in capacity shall be complete unless it contains the following:

1. Certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The governing body shall inform the applicant and the Department of the facility's compliance or noncompliance not more than 120 days from receipt of a request from the applicant. No such certification shall be required for the application for the renewal of a permit or transfer of a permit as authorized by regulations of the Board;

2. A disclosure statement, except that the Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirement for a disclosure statement for a captive industrial landfill when such a statement would not serve the purposes of this chapter;

3. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § 15.2-2204, to receive public comment on the proposed facility. Such certification shall be provided to the applicant and the Department within 120 days from receipt of a request from the applicant;

4. If the applicant proposes to operate a new sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station.

The first publication of the public notice shall be at least fourteen days prior to the public meeting date.

The provisions of this subdivision shall not apply to applicants for a permit to operate a new captive industrial landfill or a new construction-demolition-debris landfill;

5. If the applicant is a local government or public authority that proposes to operate a new municipal sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include the formation of a citizens' advisory group to assist the locality or public authority with the selection of a proposed site for the sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located, and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date. For local governments that have zoning ordinances, such public comment steps as required under §§ 15.2-2204 and 15.2-2285 shall satisfy the public comment requirements for public hearings and public notice as required under this section. Any applicant which is a local government or public authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is already located shall be exempt from the public comment requirements for public hearing and public notice otherwise required under this section;

6. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, a statement, signed by the applicant, guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with solid waste management plans developed pursuant to § 10.1-1411, and certifying that such localities will be allowed to contract for and to reserve disposal capacity in the facility. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement;

7. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, certification from the governing body of the locality in which the facility would be located that a host agreement has been reached between the applicant and the governing body unless the governing body or a public service authority of which the governing body is a member would be the owner and operator of the landfill. The agreement shall, at a minimum, have provisions covering (i) the amount of financial compensation the applicant will provide the host locality, (ii) daily travel routes and traffic volumes, (iii) the daily disposal limit, and (iv) the anticipated service area of the facility. The host agreement shall contain a provision that the applicant will pay the full cost of at least one full-time employee of the locality whose responsibility it will be to monitor and inspect waste transportation and disposal practices in the locality. The host agreement shall also provide that the applicant shall, when requested by the host locality, split air and water samples so that the host locality may independently test the sample, with all associated costs paid for by the applicant. All such sampling results shall be provided to the Department. For purposes of this subdivision, "host agreement" means any lease, contract, agreement or land use permit entered into or issued by the locality in which the landfill is situated which includes terms or conditions governing the operation of the landfill;

8. If the application is for a locality-owned and locality-operated new municipal solid waste landfill or for an expansion of an existing such municipal solid waste landfill, information on the anticipated (i) daily travel routes and traffic volumes, (ii) daily disposal limit, and (iii) service area of the facility; and

9. If the application is for a new solid waste management facility permit or for modification of a permit to allow an existing solid waste management facility to expand or increase its capacity, the application shall include certification from the governing body for the locality in which the facility is or will be located that: (i) the proposed new facility or the expansion or increase in capacity of the existing facility is consistent with the applicable local or regional solid waste management plan developed and approved pursuant to § 10.1-1411; or (ii) the local government or solid waste management planning unit has initiated the process to revise the solid waste management plan to include the new or expanded facility. Inclusion of such certification shall be sufficient to allow processing of the permit application, up to but not including publication of the draft permit or permit amendment for public comment, but shall not bind the Director in making the determination required by subdivision D 1.

C. Notwithstanding any other provision of law:

1. Every holder of a permit issued under this article who has not earlier filed a disclosure statement shall, prior to July 1, 1991, file a disclosure statement with the Director.

2. Every applicant for a permit under this article shall file a disclosure statement with the Director, together with the permit application or prior to September 1, 1990, whichever comes later. No permit application shall be deemed incomplete for lack of a disclosure statement prior to September 1, 1990.

3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition that renders any portion of the disclosure statement materially incomplete or inaccurate.

4. The Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirements of this subsection for a captive industrial waste landfill when such requirements would not serve the purposes of this chapter.

D. 1. Except as provided in subdivision D 2, no permit for a new solid waste management facility nor any amendment to a permit allowing facility expansion or an increase in capacity shall be issued until the Director has determined, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality-imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the proposed solid waste management facility, facility expansion, or additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411. The Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste. Subdivision D 2, in lieu of this subdivision, shall apply to nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator. The Board shall have the authority to promulgate regulations to implement this subdivision.

2. No new permit for a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator, shall be issued until the Director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The Department shall hold a public hearing within the county, city or town where the facility is to be located prior to the issuance of any such permit for the management of nonhazardous industrial solid waste.

E. The permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and the regulations of the Board and to protect present and future human health and the environment.

The Director may include in any permit such recordkeeping, testing and reporting requirements as are necessary to ensure that the local governing body of the county, city or town where the waste management facility is located is kept timely informed regarding

the general nature and quantity of waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall require disclosure of proprietary information only as is necessary to carry out the purposes of this chapter. At least once every ten years, the Director shall review and issue written findings on the environmental compliance history of each permittee, material changes, if any, in key personnel, and technical limitations, standards, or regulations on which the original permit was based. The time period for review of each category of permits shall be established by Board regulation. If, upon such review, the Director finds that repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interests of human health or the environment, the Director shall amend or revoke the permit, in accordance herewith. Whenever such review is undertaken, the Director may amend the permit to include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation or when any of the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any permit for any of the grounds listed under subsection A of § 10.1-1409.

F. There shall exist no right to operate a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste or hazardous waste within the Commonwealth. Permits for solid waste management facilities shall not be transferable except as authorized in regulations promulgated by the Board. The issuance of a permit shall not convey or establish any property rights or any exclusive privilege, nor shall it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state, or local law or regulation.

G. No person shall dispose of solid waste in open dumps.

H. No person shall own, operate or allow to be operated on his property an open dump.

I. No person shall allow waste to be disposed of on his property without a permit. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be required to obtain a permit if such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared. The Board shall by regulation provide for other reasonable exemptions from permitting requirements for the disposal of trees, brush and other vegetation when such materials are removed for agricultural or forestal purposes.

When promulgating any regulation pursuant to this section, the Board shall consider the character of the land affected, the density of population, and the volume of waste to be disposed, as well as other relevant factors.

J. No permit shall be required pursuant to this section for recycling or for temporary storage incidental to recycling. As used in this subsection, "recycling" means any process whereby material which would otherwise be solid waste is used or reused, or prepared for

use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product.

K. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the treatment of waste and to establish an expedited approval process. Agricultural operations receiving only yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated; (iii) the total time for the composting process and storage of material that is being composted or has been composted shall not exceed eighteen months prior to its field application or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural operation notifies the Director in writing of his intent to operate a yard waste composting facility and the amount of land available for the receipt of yard waste. In addition to the requirements set forth in clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator in any twelve-month period shall be exempt from permitting requirements provided (i) the owner and operator submit to the Director an annual report describing the volume and types of yard waste received by such operation for composting and (ii) the operator shall certify that the yard waste composting facility complies with local ordinances. The Director shall establish a procedure for the filing of the notices, annual reports and certificates required by this subsection and shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or of conditioning soil shall be sold in accordance with the Virginia Fertilizer Act (§ 3.1-106.1 et seq.). As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in subsection B of § 3.1-22.29.

The operation of a composting facility as provided in this subsection shall not relieve the owner or operator of such a facility from liability for any violation of this chapter.

L. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. To accomplish this, the Board shall approve an expedited approval process. As used in this subsection, the decomposition of vegetative waste means a natural aerobic or anaerobic process, active or passive, which results in the decay and chemical breakdown of the vegetative waste. Nothing in this subsection shall be construed to prohibit a city or county from exercising its existing authority to regulate such facilities by requiring, among other things, permits and proof of financial security.

M. In receiving and processing applications for permits required by this section, the Director shall assign top priority to applications which (i) agree to accept nonhazardous recycling residues and (ii) pledge to charge tipping fees for disposal of nonhazardous recycling residues which do not exceed those charged for nonhazardous municipal solid waste. Applications meeting these requirements shall be acted upon no later than six months after they are deemed complete.

N. Every solid waste management facility shall be operated in compliance with the regulations promulgated by the Board pursuant to this chapter. To the extent consistent with federal law, those facilities which were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity, provided that the facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance, and further provided that on or before October 9, 1993, the owner or operator of the solid waste management facility submits to the Director:

1. An acknowledgement that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action and financial responsibility requirements;

2. A statement signed by a registered professional engineer that he has reviewed the regulations established by the Department for solid waste management facilities, including the open dump criteria contained therein; that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations; and that, on the basis of his inspection and review, he has concluded that: (i) the facility is not an open dump, (ii) the facility does not pose a substantial present or potential hazard to human health and the environment, and (iii) the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water or ground water in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

3. A statement signed by the owner or operator (i) that the facility complies with applicable financial assurance regulations and (ii) estimating when the facility will reach its vertical design capacity.

The facility may not be enlarged prematurely to avoid compliance with state or federal regulations when such enlargement is not consistent with past operating practices, the permit or modified operating practices to ensure good management.

Facilities which are authorized by this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall be as follows:

Category 1: Nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility;

Category 2: Nonhazardous industrial waste facilities other than those that are located on property owned or controlled by the generator of the waste disposed of in the facility, provided that the facility accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

Category 3: Facilities that accept only construction-demolition-debris waste as defined in the Board's regulations.

The Director may prohibit or restrict the disposal of waste in facilities described in this subsection which contains hazardous constituents as defined in applicable regulations which, in the opinion of the Director, would pose a substantial risk to health or the environment. Facilities described in category 3 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

Owners or operators of facilities which are authorized under this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities under the Board's current regulations and local ordinances. Prior to the expansion of any facility described in category 2 or 3, the owner or operator shall provide the Director with written notice of the proposed expansion at least sixty days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment. The Director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with regulations promulgated by the Board.

Nothing in this subsection shall alter any requirement for groundwater monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance or corrective action imposed under state or federal law or regulation, or impair the powers of the Director pursuant to § 10.1-1409.

O. Portions of a permitted solid waste management facility used solely for the storage of household hazardous waste may store household hazardous waste for a period not to exceed one year, provided that such wastes are properly contained and are segregated to prevent mixing of incompatible wastes.

P. Any permit for a new municipal solid waste landfill, and any permit amendment authorizing expansion of an existing municipal solid waste landfill, shall incorporate conditions to require that capacity in the landfill will be available to localities within the Commonwealth that choose to contract for and reserve such capacity for disposal of such localities' solid waste in accordance with solid waste management plans developed by such localities pursuant to § 10.1-1411. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within the political subdivision or subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

Q. No application for coverage under a permit-by-rule or for modification of coverage under a permit-by-rule shall be complete unless it contains certification from the governing body of the locality in which the facility is to be located that the facility is consistent with the solid waste management plan developed and approved in accordance with § 10.1-1411.

§ 10.1-1408.2. Certification and on-site presence of facility operator.

A. On and after January 1, 1993, no person shall be employed as a waste management facility operator, nor shall any person represent himself as a waste management facility operator, unless such person has been licensed by the Board for Waste Management Facility Operators.

B. On and after January 1, 1993, all solid waste management facilities shall operate under the direct supervision of a waste management facility operator licensed by the Board for Waste Management Facility Operators.

§ 10.1-1408.3 of Chapter 14 of Title 10.1 of the Code of Virginia is repealed.

§ 10.1-1408.4. Landfill siting review.

A. Before granting a permit which approves site suitability for a new municipal solid waste landfill, the Director shall determine, in writing, that the site on which the landfill is to be constructed is suitable for the construction and operation of such a landfill. In making his determination, the Director shall consider and address, in addition to such others as he deems appropriate, the following factors:

1. Based on a written, site-specific report prepared by the Virginia Department of Transportation, the adequacy of transportation facilities that will be available to serve the landfill, including the impact of the landfill on local traffic volume, road congestion, and highway safety;

2. The potential impact of the proposed landfill on parks and recreational areas, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism; and

3. The geologic suitability of the proposed site, including proximity to areas of seismic activity and karst topography.

The applicant shall provide such information on these factors as the Director may request.

B. In addition to such other types of locations as may be determined by the Board, no new municipal solid waste landfill shall be constructed:

1. In a 100-year flood plain;

2. In any tidal wetland or nontidal wetland contiguous to any surface water body, except in accordance with § 10.1-1408.5;

3. Within three miles upgradient of any existing surface or groundwater public water supply intake or reservoir. However, a new municipal solid waste landfill may be constructed within a closer distance but no closer than one mile from any existing surface or groundwater public water supply intake or reservoir if: (i) the proposed landfill would meet all of the other requirements of this chapter and subtitle D of the federal Resource Conservation and Recovery Act, including alternative liner systems approved in accordance with that Act; (ii) the permit requires that groundwater protection standards be established and approved by the Director prior to the receipt of waste; (iii) the permit requires installation of at least two synthetic liners under the waste disposal areas and requires leachate collection systems to be installed above and below the uppermost liner; (iv) the permit requires all groundwater monitoring wells located within the facility's boundary and between the landfill and any water supply intake to be sampled quarterly and the results reported to the Department within 15 days of the owner or operator receiving the laboratory analysis; and (v) the proposed landfill meets any other conditions deemed necessary by the Director, in consultation with the Commissioner of Health, to protect against groundwater and surface water contamination. In the Counties of Mecklenburg and Halifax, a new municipal solid waste landfill may be exempt from the provisions of this subdivision and may be constructed within a shorter distance from an existing surface or groundwater public water supply intake or reservoir if the Director determines that such distance would not be detrimental to human health and the environment;

4. In any area vulnerable to flooding resulting from dam failures;

5. Over a sinkhole or less than 100 feet above a solution cavern associated with karst topography;

6. In any park or recreational area, wildlife management area or area designated by any federal or state agency as the critical habitat of any endangered species; or

7. Over an active fault.

C. There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to public water supplies, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.

§ 10.1-1408.5. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this subsection shall not apply to subsection B or the (i) expansion of an existing municipal solid waste landfill located in a city with a population between 41,000 and 52,500 when the owner or operator of the landfill is an authority created pursuant to § 15.2-5102 that has applied for a permit under § 404 of the federal Clean Water Act prior to January 1, 1989, and the owner or operator has received a permit under § 404 of the federal Clean Water Act and § 62.1-44.15:5 of this Code, or (ii) construction of a new municipal solid waste landfill in any county with a population between 29,200 and 30,000, according to the 1990 United States Census, and provided that the municipal solid waste landfills covered under clauses (i) and (ii) have complied with all other applicable federal and state environmental laws and regulations. It is expressly understood that while the provisions of this section provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the project should receive the necessary environmental and regulatory permits to proceed. For the purposes of this section, the term "expansion of a municipal solid waste landfill" shall include the siting and construction of new cells or the expansion of existing cells at the same location.

B. The Director may issue a solid waste permit for the expansion of a municipal solid waste landfill located in a wetland only if the following conditions are met: (i) the proposed landfill site is at least 100 feet from any surface water body and at least one mile from any tidal wetland; (ii) the Director determines, based upon the existing condition of the wetland system, including, but not limited to, sedimentation, toxicity, acidification, nitrification, vegetation, and proximity to existing permitted waste disposal areas, roads or other structures, that the construction or restoration of a wetland system in another location in accordance with a Virginia Water Protection Permit approved by the State Water Control Board would provide higher quality wetlands; and (iii) the permit requires a minimum two-to-one wetlands mitigation ratio. This subsection shall not apply to the exemptions provided in clauses (i) and (ii) of subsection A.

C. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is within a mile of such a wetland, unless the Director determines that less frequent monitoring is necessary. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts

only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the Director. All results shall be reported to the Department.

D. This section shall not apply to landfills which impact less than two acres of nontidal wetlands.

E. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

F. There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to wetlands, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.

§ 10.1-1409. Revocation or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board:

1. The permit holder has violated any regulation or order of the Board, any condition of a permit, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a threat of release of harmful substances into the environment or presents a hazard to human health, or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Director, demonstrate the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. The sanitary landfill or other facility used for disposal, storage or treatment of solid waste is maintained or operated in such a manner as to pose a substantial present or potential hazard to human health or the environment;

3. The sanitary landfill, or other facility used for the disposal, storage or treatment of solid waste, because of its location, construction or lack of protective construction or measures to prevent pollution, poses a substantial present or potential hazard to human health or the environment;

4. Leachate or residues from the sanitary landfill or other facility used for the disposal, storage or treatment of solid waste pose a substantial threat of contamination or pollution of the air, surface waters or ground water;

5. The person to whom the permit was issued abandons or ceases to operate the facility, or sells, leases or transfers the facility without properly transferring the permit in accordance with the regulations of the Board;

6. As a result of changes in key personnel, the Director finds that the requirements necessary for issuance of a permit are no longer satisfied;

7. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in applying for a permit or in his disclosure statement, or in any other report or certification required under this law or under the regulations of the Board, or has knowingly or willfully failed to notify the Director of any material change to the information in its disclosure statement; or

8. Any key personnel has been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; violation of antitrust laws; or has 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 conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

(a) The nature and details of the acts attributed to key personnel;

(b) The degree of culpability of the applicant, if any;

(c) The applicant's policy or history of discipline of key personnel for such activities;

(d) Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;

(e) Whether the applicant has implemented formal management controls to minimize and prevent the occurrence of such violations; and

(f) Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for the violations or other demonstrations of good behavior by the applicant that the Director finds relevant to its decision.

B. The Director may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment;

2. There is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or ground water;

3. Investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or

4. The amendment is necessary to meet changes in applicable regulatory requirements.

C. If the Director finds that solid wastes are no longer being stored, treated or disposed at a facility in accordance with Board regulations, he may revoke the permit issued for such facility. As a condition to granting or continuing in effect a permit, he may also require the permittee to provide perpetual care and surveillance of the facility.

D. If the Director summarily suspends a permit pursuant to subdivision 18 of § 10.1-1402, the Director shall hold a conference pursuant to § 2.2-4019 within forty-eight hours to consider whether to continue the suspension pending a hearing to amend or revoke the permit, or to issue any other appropriate order. Notice of the hearing shall be delivered at the conference or sent at the time the permit is suspended. Any person whose permit is suspended by the Director shall cease activity for which the permit was issued until the permit is reinstated by the Director or by a court.

§ 10.1-1410. Financial responsibility for abandoned facilities; penalties.

A. The Board shall promulgate regulations which ensure that if a facility for the disposal, transfer, or treatment of solid waste is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 shall be considered a transfer facility for the purposes of this subsection.

B. The regulations may include provisions for bonding, the creation of a trust fund to be maintained within the Department, self-insurance, other forms of commercial insurance, or such other mechanism as the Department may deem appropriate. Regulations governing the amount thereof shall take into consideration the potential for contamination and injury by the solid waste, the cost of disposal of the solid waste and the cost of restoring the facility to a safe condition. Any bonding requirements shall include a provision authorizing the use of personal bonds or other similar surety deemed sufficient to provide the protections specified in subsection A upon a finding by the Director that commercial insurance or surety bond cannot be obtained in the voluntary market due to circumstances beyond the control of the permit holder. Any commercial insurance or

surety obtained in the voluntary market shall be written by an insurer licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2.

C. No state governmental agency shall be required to comply with such regulations.

D. Forfeiture of any financial obligation imposed pursuant to this section shall not relieve any holder of a permit issued pursuant to the provisions of this article of any other legal obligations for the consequences of abandonment of any facility.

E. Any funds forfeited prior to July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the county, city or town in which the abandoned facility is located. The county, city or town in which the facility is located shall expend forfeited funds as necessary to restore and maintain the facility in a safe condition.

F. Any funds forfeited on or after July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the Director. The Director shall then expend forfeited funds as necessary solely to restore and maintain the facility in a safe condition. Nothing in this section shall require the Director to expend funds from any other source to carry out the activities contemplated under this subsection.

G. Any person who knowingly and willfully abandons a solid waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who knowingly and willfully abandons a solid waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1410.1. Sanitary landfill final closure plans; notification requirements.

When any owner or operator of a sanitary landfill submits by certified mail a final closure plan in accordance with the requirements of this chapter and the regulations adopted thereunder, the Department shall within ninety days of its receipt of such plan, notify by certified mail the owner or operator of the Department's decision to approve or disapprove the final closure plan. The ninety-day period shall begin on the day the Department receives the plan by certified mail.

§ 10.1-1410.2. Landfill postclosure monitoring, maintenance and plans.

A. The owner and operator of any solid waste landfill permitted under this chapter shall be responsible for ensuring that such landfill is properly closed in accordance with the

Board's regulations and that the landfill is maintained and monitored after closure so as to protect human health and the environment. Maintenance and monitoring of solid waste landfills after closure shall be in accordance with the Board's regulations. At all times during the operational life of a solid waste landfill, the owner and operator shall provide to the Director satisfactory evidence of financial assurance consistent with all federal and state laws and regulations to ensure that the landfill will be:

1. Closed in accordance with the Board's regulations and the closure plan approved for the landfill; and

2. Monitored and maintained after closure, for such period of time as provided in the Board's regulations or for such additional period as the Director shall determine is necessary, in accordance with a postclosure plan approved by the Director.

B. Not less than 180 days prior to the completion of the postclosure monitoring and maintenance period as prescribed by the Board's regulations or by the Director, the owner or operator shall submit to the Director a certificate, signed by a professional engineer licensed in the Commonwealth, that postclosure monitoring and maintenance have been completed in accordance with the postclosure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that postclosure monitoring and maintenance are discontinued. If the Director determines that continued postclosure monitoring or maintenance is necessary to prevent harm to human health or the environment, he shall extend the postclosure period for such additional time as the Director deems necessary to protect human health and the environment and shall direct the owner or operator to submit a revised postclosure plan and to continue postclosure monitoring and maintenance in accordance therewith. Requirements for financial assurance as set forth in subsection A shall apply throughout such extended postclosure period.

§ 10.1-1410.3. Operating burn pits at closed landfills.

The Department shall develop policies and procedures to allow for the infrequent burning of vegetative waste at permitted landfills that have ceased accepting waste but have not been released from postclosure care requirements. The policies and procedures developed shall include measures to ensure protection of public health and the environment, including (i) limits to the amount of vegetative waste that may be burned, (ii) the types of materials that may be burned, (iii) the frequency of the burning, (iv) the length of time the burning occurs, and (v) an evaluation of other alternatives for managing the vegetative waste. Nothing in this section shall be construed to prohibit a city or locality from exercising its authority to regulate such facilities by requiring among other things, permits or approvals.

§ 10.1-1411. Regional and local solid waste management plans.

A. The Board is authorized to promulgate regulations specifying requirements for local and regional solid waste management plans.

To implement regional plans, the Governor may designate regional boundaries. The governing bodies of the counties, cities and towns within any region so designated shall be responsible for the development and implementation of a comprehensive regional solid waste management plan in cooperation with any planning district commission or commissions in the region. Where a county, city or town is not part of a regional plan, it shall develop and implement a local solid waste management plan in accordance with the Board's regulations. For purposes of this section, each region or locality so designated shall constitute a solid waste planning unit.

B. The Board's regulations shall include all aspects of solid waste management including waste reduction, recycling and reuse, storage, treatment, and disposal and shall require that consideration be given to the handling of all types of nonhazardous solid waste generated in the region or locality. In promulgating such regulations, the Board shall consider urban concentrations, geographic conditions, markets, transportation conditions, and other appropriate factors and shall provide for reasonable variances and exemptions thereto, as well as variances or exemptions from the minimum recycling rates specified herein when market conditions beyond the control of a county, city, town, or region make such mandatory rates unreasonable.

C. The Board's regulations shall permit the following credits, provided that the aggregate of all such credits permitted shall not exceed five percentage points of the annual municipal solid waste recycling rate achieved for each solid waste planning unit:

1. A credit of one ton for each ton of recycling residue generated in Virginia and deposited in a landfill permitted under subsection M of § 10.1-1408.1;

2. A credit of two percentage points of the minimum recycling rate mandated for the solid waste planning unit for a source reduction program that is implemented with the solid waste planning unit. The existence and operation of such a program shall be certified by the solid waste planning unit;

3. A credit of one ton for each ton of any solid waste material that is reused; and

4. A credit of one ton for each ton of any nonmunicipal solid waste material that is recycled.

D. Each solid waste planning unit shall maintain a minimum recycling rate for municipal solid waste generated within the solid waste planning unit pursuant to the following schedule:

1. Except as provided in subdivision 2, each solid waste planning unit shall maintain a minimum 25% recycling rate; or

2. Each solid waste planning unit shall maintain a minimum 15% recycling rate if it has (i) a population density rate of less than 100 persons per square mile according to the most recent United States Census, or (ii) a not seasonally adjusted civilian unemployment rate for the immediately preceding calendar year that is at least 50% greater than the state average as reported by the Virginia Employment Commission for such year.

After July 1, 2007, no permit for a new sanitary landfill, incinerator, or waste-to-energy facility, or for an expansion, increase in capacity, or increase in the intake rate of an existing sanitary landfill, incinerator, or waste-to-energy facility shall be issued until the solid waste planning unit within which the facility is located has a solid waste management plan approved by the Board in accordance with the regulations, except as provided in this subsection. Failure to attain a mandated municipal solid waste recycling rate shall not be the sole cause for the denial of any permit or permit amendment, except as provided herein for sanitary landfills, incinerators, or waste-to-energy facilities, provided that all components of the solid waste management plan for the planning unit are in compliance with the regulations. The provisions of this subsection shall not be applicable to permits or permit amendments required for the operation or regulatory compliance of any existing facility, regardless of type, nor shall it be cause for the delay of any technical or administrative review of pending amendments thereto.

If a county levies a consumer utility tax and the ordinance provides that revenues derived from such source, to the extent necessary, be used for solid waste disposal, the county may charge a town or its residents, establishments and institutions an amount not to exceed their pro rata cost, based upon population for such solid waste management if the town levies a consumer utility tax. This shall not prohibit a county from charging for disposal of industrial or commercial waste on a county-wide basis, including that originating within the corporate limits of towns.

§ 10.1-1412. Contracts by counties, cities and towns.

Any county, city or town may enter into contracts for the supply of solid waste to resource recovery facilities.

§ 10.1-1413. State aid to localities for solid waste disposal.

A. To assist localities in the collection, transportation, disposal and management of solid waste in accordance with federal and state laws, regulations and procedures, each county, city and town may receive for each fiscal year from the general fund of the state treasury sums appropriated for such purposes. The Director shall distribute such grants on a quarterly basis, in advance, in accordance with Board regulations, to those counties, cities and towns which submit applications therefor.

B. Any county, city or town applying for and receiving such funds shall utilize the funds only for the collection, transportation, disposal or management of solid waste. The Director shall cause the use and expenditure of such funds to be audited and all funds not used for the specific purposes stated herein shall be refunded to the general fund.

C. All funds granted under the provisions of this section shall be conditioned upon and subject to the satisfactory compliance by the county, city or town with applicable federal and state legislation and regulations. The Director may conduct periodic inspections to ensure satisfactory compliance.

§ 10.1-1413.1. Waste information and assessment program.

A. The Department shall report by June 30 of each year the amount of solid waste, by weight or volume, disposed of in the Commonwealth during the preceding calendar year. The report shall identify solid waste by the following categories: (i) municipal solid waste; (ii) construction and demolition debris; (iii) incinerator ash; (iv) sludge other than sludge that is land applied in accordance with § 62.1-44.19:3; and (v) tires. For each such category the report shall include an estimate of the amount that was generated outside of the Commonwealth and the jurisdictions where such waste originated, if known. The report shall also estimate the amount of solid waste managed or disposed of by each of the following methods: (i) recycling; (ii) composting; (iii) landfilling; and (iv) incineration.

B. All permitted facilities that treat, store or dispose of solid waste shall provide the Department not more than annually, upon request, with such information in their possession as is reasonably necessary to prepare the report required by this section. At the option of the facility owner, the data collected may include an accounting of the facility's economic benefits to the locality where the facility is located including the value of disposal and recycling facilities provided to the locality at no cost or reduced cost, direct employment associated with the facility, and other economic benefits resulting from the facility during the preceding calendar year. No facility shall be required pursuant to this section to provide information that is a trade secret as defined in § 59.1-336.

C. This section shall not apply to captive waste management facilities.

§ 10.1-1413.2. Requirements for landfill closure.

The Department shall prioritize the closure of landfills that are owned by local governments or political subdivisions, or that are located in the locality and have been abandoned in violation of this chapter, and are not equipped with liner and leachate control systems meeting the requirements of the Board's regulations. The prioritization shall be based on the greatest threat to human health and the environment. The Department shall establish a schedule, after public notice and a period for public comment, based upon that prioritization requiring municipal solid waste landfills to cease accepting solid waste in, and to prepare financial closure plans for, disposal areas permitted before October 9, 1993. No municipal solid waste landfill may continue accepting waste after 2020 in any disposal area not equipped with a liner system approved by the Department pursuant to a permit issued after October 9, 1993. Notwithstanding the provisions of subsection N of § 10.1-1408.1, failure by a landfill owner or operator to comply with the schedule established by the Department shall be a violation of this chapter. The provisions of this subsection shall not apply to municipal

solid waste landfills utilizing double synthetic liner systems permitted between December 21, 1988, and October 9, 1993, that are part of a post-mining land use plan approved under Chapter 19 (§ 45.1-226 et seq.) of Title 45.1.

§ 10.1-1414. Definitions.

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

"Advisory Board" means the Litter Control and Recycling Fund Advisory Board;

"Disposable package" or "container" means all packages or containers intended or used to contain solids, liquids or materials and so designated;

"Fund" means the Litter Control and Recycling Fund;

"Litter" means all waste material disposable packages or containers but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;

"Litter bag" means a bag, sack, or durable material which is large enough to serve as a receptacle for litter inside a vehicle or watercraft which is similar in size and capacity to a state approved litter bag;

"Litter receptacle" means containers acceptable to the Department for the depositing of litter;

"Person" means any natural person, corporation, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, representative or group of individuals or entities of any kind;

"Public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests;

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product which may or may not be similar to the original product;

"Sold within the Commonwealth" or "sales of the business within the Commonwealth" means all sales of retailers engaged in business within the Commonwealth and in the case of manufacturers and wholesalers, sales of products for use and consumption within the Commonwealth;

"Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any person or property may be transported upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks; and

"Watercraft" means any boat, ship, vessel, barge, or other floating craft.

§ 10.1-1415. Litter Control Program.

The Department shall support local, regional and statewide programs to control, prevent and eliminate litter from the Commonwealth and to encourage the recycling of discarded materials to the maximum practical extent. Every department of state government and all governmental units and agencies of the Commonwealth shall cooperate with the Department in the administration and enforcement of this article.

This article is intended to add to and coordinate existing litter control removal and recycling efforts, and not to terminate existing efforts nor, except as specifically stated, to repeal or affect any state law governing or prohibiting litter or the control and disposition of waste.

§ 10.1-1415.1. Labeling of plastic container products required; penalty.

A. It shall be unlawful for any person to sell, expose for sale, or distribute any plastic bottle or rigid plastic container unless the container is labeled indicating the plastic resin used to produce the container. Such label shall appear on or near the bottom of the container, be clearly visible, and consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters shall be as follows:

1. For polyethylene terepthalate, the letters "PETE" and the number 1.

2. For high density polyethylene, the letters "HDPE" and the number 2.

3. For vinyl, the letter "V" and the number 3.

4. For low density polyethylene, the letters "LDPE" and the number 4.

5. For polypropylene, the letters "PP" and the number 5.

6. For polystyrene, the letters "PS" and the number 6.

7. For any other plastic resin, the letters "OTHER" and the number 7.

B. As used in subsection A of this section:

"Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined below.

"Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the container, accepts a screw-type, snap cap or other closure and has a capacity of sixteen fluid ounces or more but less than five gallons.

"Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons.

C. Any person convicted of a violation of the provisions of subsection A of this section shall be punished by a fine of not more than fifty dollars. Each day of violation shall constitute a separate offense.

§ 10.1-1415.2. Plastic holding device prohibited.

A. On and after January 1, 1993, it shall be unlawful to sell or offer for sale beverage containers connected to each other, using rings or other devices constructed of plastic which is not degradable or recyclable.

B. For the purpose of this section:

"Beverage container" means the individual bottle, can, jar, or other sealed receptacle, in which a beverage is sold, and which is constructed of metal, glass, or plastic, or other material, or any combination of these materials. "Beverage container" does not include cups or other similar open or loosely sealed containers.

"Degradable" means decomposition by photodegradation or biodegradation within a reasonable period of time upon exposure to natural elements.

§ 10.1-1416. Collection and survey of litter.

Collections and surveys of the kinds of litter that are discarded in violation of the laws of the Commonwealth shall be conducted as the need is determined by the Department, after receipt of the recommendations of the Advisory Board, or as directed by the General Assembly. The survey shall include litter found throughout the Commonwealth, including standard metropolitan statistical areas and rural and recreational areas. To the fullest extent possible, in standard metropolitan statistical areas the Department of Transportation shall make use of local litter and trash collection services through arrangements with local governing bodies and appropriate agencies, in the discharge of the duties imposed by this section. The Department of Transportation shall report to the Governor, the General Assembly and the Department as to the amount of litter collected pursuant to this section and shall include in its report an analysis of litter types, their weights and volumes, and, where practicable, the recyclability of the types of products,

packages, wrappings and containers which compose the principal amounts of the litter collected. The products whose packages, wrappings and containers constitute the litter shall include, but not be limited to the following categories:

1. Food for human or pet consumption;

2. Groceries;

3. Cigarettes and tobacco products;

4. Soft drinks and carbonated waters;

5. Beer and other malt beverages;

6. Wine;

7. Newspapers and magazines;

8. Paper products and household paper;

9. Glass containers;

10. Metal containers;

11. Plastic or fiber containers made of synthetic material;

12. Cleaning agents and toiletries;

13. Nondrug drugstore sundry products;

14. Distilled spirits; and

15. Motor vehicle parts.

§ 10.1-1417. Enforcement of article.

The Department shall have the authority to contract with other state and local governmental agencies having law-enforcement powers for services and personnel reasonably necessary to carry out the provisions of this article. In addition, all law-enforcement officers in the Commonwealth and those employees of the Department of Game and Inland Fisheries vested with police powers shall enforce the provisions of this article and regulations adopted hereunder, and are hereby empowered to arrest without warrant, persons violating any provision of this article or any regulations adopted hereunder. The foregoing enforcement officers may serve and execute all warrants and other process issued by the courts in enforcing the provisions of this article and regulations adopted hereunder.

§ 10.1-1418. Penalty for violation of article.

Every person convicted of a violation of this article for which no penalty is specifically provided shall be punished by a fine of not more than fifty dollars for each such violation.

§ 10.1-1418.1. Improper disposal of solid waste; civil penalties.

A. It shall be the duty of all persons to dispose of their solid waste in a legal manner.

B. Any owner of real estate in this Commonwealth, including the Commonwealth or any political subdivision thereof, upon whose property a person improperly disposes of solid waste without the landowner's permission, shall be entitled to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed upon land owned by the Commonwealth, any resident of the Commonwealth shall have standing to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed of upon land owned by any political subdivision of this Commonwealth, any resident of that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste. When any person improperly disposes of solid waste upon land within the jurisdiction of any political subdivision, that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste.

C. In any civil action brought pursuant to the provisions of this section, when the plaintiff establishes by a preponderance of the evidence that (i) the solid waste or any portion thereof had been in possession of the defendant prior to being improperly disposed of on any of the properties referred to in subsection A of this section and (ii) no permission had been given to the defendant to place the solid waste on such property, there shall be a rebuttable presumption that the defendant improperly disposed of the solid waste. When the solid waste has been ejected from a motor vehicle, the owner or operator of such motor vehicle shall in any civil action be presumed to be the person ejecting such matter. However, such presumption shall be rebuttable by competent evidence. This presumption shall not be applicable to a motor vehicle rental or leasing company that owns the vehicle.

D. Whenever a court finds that a person has improperly disposed of solid waste pursuant to the provisions of this section, the court shall assess a civil penalty of up to $5,000 against such defendant. All civil penalties assessed pursuant to this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title, except as provided in subsection E.

E. Any civil penalty assessed pursuant to this section in a civil action brought by a political subdivision shall be paid into the treasury of the political subdivision, except where the violator of this section is the political subdivision or its agent.

F. A court may award any person or political subdivision bringing suit pursuant to this section the cost of suit and reasonable attorney's fees.

§ 10.1-1418.2. Improper disposal of tires; exemption; penalty.

A. For the purposes of this section:

"Convenience center" means a collection point for the temporary storage of waste tires provided for individuals who choose to transport waste tires generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point shall not receive waste tires from collection vehicles that have collected waste from more than one real property owner. A convenience center shall have a system of regularly scheduled collections and may be covered or uncovered.

"Speculatively accumulated waste tires" means any waste tires that are accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Waste tires are not being accumulated speculatively when at least 75 percent of the waste tires accumulated are being removed from the site annually.

B. It shall be unlawful for any person to store, dispose of, speculatively accumulate or otherwise place more than 100 waste tires on public or private property, without first having obtained a permit as required by § 10.1-1408.1 or in a manner inconsistent with any local ordinance. No person shall allow others to store, dispose of, speculatively accumulate or otherwise place on his property more than 100 waste tires, without first having obtained a permit as required by § 10.1-1408.1.

C. Any person who knowingly violates any provision of this section shall be guilty of a Class 1 misdemeanor. However, any person who knowingly violates any provision of this section and such violation involves 500 or more waste tires shall be guilty of a Class 6 felony.

D. Salvage yards licensed by the Department of Motor Vehicles shall be exempt from this section, provided that they are holding fewer than 300 waste tires and that the waste tires do not pose a hazard or a nuisance or present a threat to human health and the environment.

E. As used in this section, the terms "store" and "otherwise place" shall not be construed as meaning the holding of fewer than 500 tires for bona fide uses related to the growing, harvesting or processing of agricultural or forest products.

F. The provisions of this section shall not apply to the (i) storage of less than 1,500 waste tires in a container at a convenience center or at a salvage yard licensed by the Department of Motor Vehicles, as long as the tires are not being speculatively accumulated, or (ii) storage of tires for recycling or for processing to use in manufacturing a new product, as long as the tires are not being speculatively accumulated.

G. The provisions of this section shall not apply to the storage of tires for recycling or for processing to use in manufacturing a new product, as long as the tires are not being speculatively accumulated.

H. Nothing in this section shall limit enforcement of the prohibitions against littering and the improper disposal of solid waste contained elsewhere in this chapter.

§ 10.1-1418.3. Liability for large waste tire pile fires; exclusions.

A. For the purposes of this section:

"Tire pile" means an unpermitted accumulation of more than 100 waste tires.

B. For any tire pile that (i) is included in the survey of waste tire piles completed by the Department in 1993 or (ii) contains tires that were placed on property with the consent of the property owner, any person who owns or is legally responsible for such a tire pile that burns or is burned and any person who owns or is legally responsible for the property where the tire pile is located shall be responsible for the damage caused by the fire and by any waste or chemical constituents released into the environment to any person who sustains damage from the fire or from any released wastes or chemical constituents. It shall not be necessary for the claimant to show that the damage was caused by negligence on the part of such owners, legally responsible persons or other person who set or caused to be set the fire that burns the tires. Damages include, but are not limited to, the cost for any repair, replacement, remediation, or other appropriate action required as a result of the fire. This liability shall be in addition to, and not in lieu of, any other liability authorized by statute or regulation. Without limiting what constitutes consent, acceptance of compensation for the placement of tires on one's property shall be deemed to be consent.

C. Any person who sets or causes to be set the fire that burns the tire pile shall be responsible for the damage caused by the fire and by any waste or chemical constituents released into the environment to any person who sustains damage from the fire or from any released wastes or chemical constituents. It shall not be necessary for the claimant to show that the damage was caused by negligence on the part of such owners, legally responsible persons or other persons who set or caused to be set the fire that burns the tires. Damages shall include, but are not limited to, the cost for any repair, replacement, remediation, or other appropriate action required as a result of the fire. This liability shall be in addition to, and not in lieu of, any liability authorized by statute or regulation.

D. Any person who transfers waste tires for disposition and has taken all reasonable steps to ensure proper disposition of the waste tires shall not be held liable under the standard set forth in this section. Documentation that a person has taken all reasonable steps to ensure proper disposition of the waste tires may include, but is not limited to, utilization of the Waste Tire Certification developed by the Department and any equivalent manifest or tracking system.

§ 10.1-1418.4. Removal of waste tire piles; cost recovery; right of entry.

Notwithstanding any other provision, upon the failure of any owner or operator to remove or remediate a waste tire pile in accordance with an order issued pursuant to this chapter or § 10.1-1186, the Director may enter the property and remove the waste tires. The Director is authorized to recover from the owner of the site or the operator of the tire pile the actual and reasonable costs incurred to complete such removal or remediation. If a request for reimbursement is not paid within 30 days of the receipt of a written demand for reimbursement, the Director may refer the demand for reimbursement to the Attorney General for collection or may secure a lien in accordance with § 10.1-1418.5.

§ 10.1-1418.5. Lien for waste tire pile removal.

A. The Commonwealth shall have a lien, if perfected as hereinafter provided, on land subject to removal action under § 10.1-1418.4 for the amount of the actual and reasonable costs incurred to complete such removal action.

B. The Director shall perfect the lien given under the provisions of this section by filing, within six months after completion of the removal, in the clerk's office of the court of the county or city in which the land or any part of the land is situated, a statement consisting of (i) the name of the owner of record of the property sought to be charged, (ii) an itemized account of moneys expended for the removal work, and (iii) a brief description of the property to which the lien attaches.

C. It shall be the duty of the clerk of the court in whose office the statement described in subsection B is filed to record the statement in the deed books of the office and to index the statement in the general index of deeds in the name of the Commonwealth as well as the owner of the property, and shall show the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

D. Liens acquired under this section shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

E. Any party having an interest in the real property against which a lien has been filed may, within 60 days of such filing, petition the court of equity having jurisdiction wherein the property or some portion of the property is located to hold a hearing to review the amount of the lien. After reasonable notice to the Director, the court shall hold a hearing to determine whether such costs were reasonable. If the court determines that such charges were excessive, it shall determine the proper amount and order that the lien and the record be amended to show the new amount.

F. Liens acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this section. The proceeds from any lien shall be deposited in the Waste Tire Trust Fund established pursuant to § 10.1-1422.3. If an owner fails to satisfy a lien as provided herein, the

Director may proceed to enforce the lien by a bill filed in the court of equity having jurisdiction wherein the property or some portion of the property is located.

§ 10.1-1419. Litter receptacles; placement; penalty for violations.

A. The Board shall promulgate regulations establishing reasonable guidelines for the owners or persons in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as a public way who may be required to place and maintain receptacles acceptable to the Board.

In formulating such regulations the Board shall consider, among other public places, the public highways of the Commonwealth, all parks, campgrounds, trailer parks, drive-in restaurants, construction sites, gasoline service stations, shopping centers, retail store parking lots, parking lots of major industrial and business firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers and beaches and bathing areas. The number of such receptacles required to be placed as specified herein shall be determined by the Board and related to the need for such receptacles. Such litter receptacles shall be maintained in a manner to prevent overflow or spillage.

B. A person owning or operating any establishment or public place in which litter receptacles of a design acceptable to the Board are required by this section shall procure and place such receptacles at his own expense on the premises in accordance with Board regulations.

C. Any person who fails to place and maintain such litter receptacles on the premises in the number and manner required by Board regulation, or who violates the provisions of this section or regulations adopted hereunder shall be subject to a fine of twenty-five dollars for each day of violation.

§ 10.1-1420. Litter bag.

The Department may design and produce a litter bag bearing the state anti-litter symbol and a statement of the penalties prescribed for littering. Such litter bags may be distributed by the Department of Motor Vehicles at no charge to the owner of every licensed vehicle in the Commonwealth at the time and place of the issuance of a license or renewal thereof. The Department may make the litter bags available to the owners of watercraft in the Commonwealth and may also provide the litter bags at no charge to tourists and visitors at points of entry into the Commonwealth and at visitor centers to the operators of incoming vehicles and watercraft.

§ 10.1-1421. Responsibility for removal of litter from receptacles.

The responsibility for the removal of litter from litter receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies now performing litter removal services. The removal of litter from

litter receptacles placed on private property used by the public shall remain the duty of the owner or operator of such private property.

§ 10.1-1422. Further duties of Department.

In addition to the foregoing duties the Department shall:

1. Serve as the coordinating agency between the various industry and business organizations seeking to aid in the recycling and anti-litter effort;

2. Recommend to local governing bodies that they adopt ordinances similar to the provisions of this article;

3. Cooperate with all local governments to accomplish coordination of local recycling and anti-litter efforts;

4. Encourage all voluntary local recycling and anti-litter campaigns seeking to focus the attention of the public on the programs of the Commonwealth to control and remove litter and encourage recycling;

5. Investigate the availability of, and apply for, funds available from any private or public source to be used in the program provided for in this article;

6. Allocate funds annually for the study of available research and development in recycling and litter control, removal, and disposal, as well as study methods for implementation in the Commonwealth of such research and development. In addition, such funds may be used for the development of public educational programs concerning the litter problem and recycling. Grants shall be made available for these purposes to those persons deemed appropriate and qualified by the Board or the Department;

7. Investigate the methods and success of other techniques in recycling and the control of litter, and develop, encourage and coordinate programs in the Commonwealth to utilize successful techniques in recycling and the control and elimination of litter; and

8. Expend, after receiving the recommendations of the Advisory Board, at least 90% of the funds deposited annually into the Fund pursuant to contracts with localities. The Department may enter into contracts with planning district commissions for the receipt and expenditure of funds attributable to localities which designate in writing to the Department a planning district commission as the agency to receive and expend funds hereunder.

§ 10.1-1422.01. Litter Control and Recycling Fund established; use of moneys; purpose of Fund.

A. All moneys collected from the taxes imposed under §§ 58.1-1700 through 58.1-1710 and by the taxes increased by Chapter 616 of the 1977 Acts of Assembly, shall be paid

into the treasury and credited to a special nonreverting fund known as the Litter Control and Recycling Fund, which is hereby established. The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Director is authorized to release money from the Fund on warrants issued by the Comptroller after receiving and considering the recommendations of the Advisory Board for the purposes enumerated in subsection B of this section.

B. Moneys from the Fund shall be expended, according to the allocation formula established in subsection C of this section, for the following purposes:

1. Local litter prevention and recycling grants to localities that meet the criteria established in § 10.1-1422.04;

2. Litter prevention and recycling grants to localities and nonprofit entities meeting the criteria established in § 10.1-1422.05; and

3. Payment to (i) the Department to process the grants authorized by this article and (ii) the actual administrative costs of the Advisory Board. The Director shall assign one person in the Department to serve as a contact for persons interested in the Fund.

C. All moneys deposited into the Fund shall be expended pursuant to the following allocation formula:

1. Ninety percent for grants made to localities pursuant to subdivision B 1 of this section;

2. Five percent for litter prevention and recycling grants made pursuant to subdivision B 2 of this section; and

3. Up to a maximum of 5% for the actual administrative expenditures authorized pursuant to subdivision B 3 of this section.

§ 10.1-1422.02. Litter Control and Recycling Fund Advisory Board established; duties and responsibilities.

There is hereby created the Litter Control and Recycling Fund Advisory Board. The Advisory Board shall:

1. Review applications received by the Department for grants from the Fund and make recommendations to the Director for the award of all grants authorized pursuant to § 10.1-1422.01;

2. Promote the control, prevention and elimination of litter from the Commonwealth and encourage the recycling of discarded materials to the maximum practical extent; and

3. Advise the Director on such other litter control and recycling matters as may be requested by the Director or any other state agency.

§ 10.1-1422.03. Membership, meetings, and staffing.

A. The Advisory Board shall consist of five persons appointed by the Governor. Three members shall represent persons paying the taxes which are deposited into the Fund and shall include one member appointed from nominations submitted by recognized industry associations representing retailers; one member appointed from nominations submitted by recognized industry associations representing soft drink distributors; and one member appointed from nominations submitted by recognized industry associations representing beer distributors. One member shall be a local litter or recycling coordinator. One member shall be from the general public.

B. The initial terms of the members of the Advisory Board shall expire July 1, 1999, and five members shall be appointed or reappointed effective July 1, 1999, for terms as follows: one member shall be appointed for a term of one year; one member shall be appointed for a term of two years; one member shall be appointed for a term of three years; and two members shall be appointed for terms of four years unless found to violate subsection E of this section. Thereafter, all appointments shall be for terms of four years except for appointments to fill vacancies, which shall be for the unexpired term. They shall not receive a per diem, compensation for their service, or travel expenses.

C. The Advisory Board shall elect a chairman and vice-chairman annually from among its members. The Advisory Board shall meet at least twice annually on such dates and at such times as they determine. Three members of the Advisory Board shall constitute a quorum.

D. Staff support and actual associated administrative expenses of the Advisory Board shall be provided by the Department from funds allocated from the Fund.

E. Any member who is absent from three consecutive meetings of the Advisory Board, as certified by the Chairman of the Advisory Board to the Secretary of the Commonwealth, shall be dismissed as a member of the Advisory Board. The replacement of any dismissed member shall be appointed pursuant to subsection A of this section and meet the same membership criteria as the member who has been dismissed.

§ 10.1-1422.04. Local litter prevention and recycling grants; eligibility and funding process.

The Director shall award local litter prevention and recycling grants to localities that apply for such grants and meet the eligibility requirements established in the Department's Guidelines for Litter Prevention and Recycling Grants (DEQ-LPR-2) which were in effect on January 1, 1995, and as may be amended by the Advisory Board after notice and opportunity to be heard by persons interested in grants awarded pursuant to

this section. Grants awarded by the Director shall total the amount of Litter Control and Recycling Funds available annually as provided in subdivision B 1 of § 10.1-1422.01.

§ 10.1-1422.05. Litter control and recycling grants.

The Director, after receiving the recommendations of the Advisory Board, shall award litter prevention and recycling grants to localities that meet the requirements established in § 10.1-1422.04, and to any nonprofit entity composed of representatives of localities who meet the criteria established in § 10.1-1422.04. These grants shall be awarded for the public purpose of developing and implementing local, regional, and statewide litter control and recycling programs for which the grants provided for in § 10.1-1422.04 are found by the Director to be inadequate. Grants awarded by the Director pursuant to this section shall total the amount of litter control and recycling funds available annually as provided in subdivision B 2 of § 10.1-1422.01.

§ 10.1-1422.1. Disposal of waste tires.

The Department shall develop and implement a plan for the management and transportation of all waste tires in the Commonwealth.

§ 10.1-1422.2. Recycling residues; testing.

The Department shall develop and implement a plan for the testing of recycling residues generated in the Commonwealth to determine whether they are nonhazardous. The costs of conducting such tests shall be borne by the person wishing to dispose of such residues.

§ 10.1-1422.3. Waste Tire Trust Fund established; use of moneys; purpose of Fund.

A. All moneys collected pursuant to § 58.1-642, minus the necessary expenses of the Department of Taxation for the administration of this tire recycling fee as certified by the Tax Commissioner, shall be paid into the treasury and credited to a special nonreverting fund known as the Waste Tire Trust Fund, which is hereby established. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Department of Waste Management is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes enumerated in this section, or any regulations adopted thereunder.

B. Moneys from the Fund shall be expended to:

1. Pay the costs of implementing the waste tire plan authorized by § 10.1-1422.1, as well as the costs of any programs created by the Department pursuant to such a plan;

2. Provide partial reimbursement to persons for the costs of using waste tires or chips or similar materials; and

3. Pay the costs to remove waste tire piles from property pursuant to § 10.1-1418.4, to the extent funds are available from the increased revenues generated by the increased tire recycling fee collected beginning July 1, 2003, and ending July 1, 2006, in accordance with § 58.1-641.

C. Reimbursements under § 10.1-1422.4 shall not be made until regulations establishing reimbursement procedures have become effective.

§ 10.1-1422.4. Partial reimbursement for waste tires; eligibility; promulgation of regulations.

A. The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials.

B. Any person who (i) purchases waste tires generated in Virginia and who uses the tires or chips or similar materials for resource recovery or other appropriate uses as established by regulation may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials or (ii) uses but does not purchase waste tires or chips or similar materials for resource recovery or other appropriate uses as established by regulation may apply for a reimbursement of part of the cost of such use.

C. To be eligible for the reimbursement (i) the waste tires or chips or similar materials shall be generated in Virginia, and (ii) the user of the waste tires shall be the end user of the waste tires or chips or similar materials. The end user does not have to be located in Virginia.

D. Reimbursements from the Waste Tire Trust Fund shall be made at least quarterly.

E. The Board shall promulgate regulations necessary to carry out the provisions of this section. The regulations shall include, but not be limited to:

1. Defining the types of uses eligible for partial reimbursement;

2. Establishing procedures for applying for and processing of reimbursements; and

3. Establishing the amount of reimbursement.

F. For the purposes of this section "end user" means (i) for resource recovery, the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials and (ii) for other eligible uses of waste tires, the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the end user is the last person to use the tire as a tire, as tire chips, or as similar material. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

§ 10.1-1422.5.

Repealed by Acts 2001, c. 569.

§ 10.1-1422.6. Used motor oil, oil filters, and antifreeze; signs; establishment of statewide program.

A. The Department shall establish a statewide used motor oil, oil filters, and antifreeze management program. The program shall encourage the environmentally sound management of motor oil, oil filters, and antifreeze by (i) educating consumers on the environmental benefits of proper management, (ii) publicizing options for proper disposal, and (iii) promoting a management infrastructure that allows for the convenient recycling of these materials by the public. The Department may contract with a qualified public or private entity to implement this program.

B. The Department shall maintain a statewide list of sites that accept used (i) motor oil, (ii) oil filters, and (iii) antifreeze from the public. The list shall be updated at least annually. The Department shall create, maintain, and promote an Internet Web site where consumers may receive information describing the location of collection sites in their locality to properly dispose of used motor oil, oil filters, and antifreeze.

C. The Department shall establish an ongoing outreach program to existing and potential collection sites that provides a point of contact for questions and disseminates information on (i) the way to establish a collection site, (ii) technical issues associated with being a collection site, and (iii) the benefits of continued participation in the program.

D. Any person who sells motor oil, oil filters, or antifreeze at the retail level and who does not accept the return of used motor oil, oil filters, or antifreeze shall post a sign that encourages the environmentally sound management of these products and provides a Web site address where additional information on the locations of used motor oil, oil filters and antifreeze collection sites are available. This sign shall be provided by the Department or its designee to all establishments selling motor oil, oil filters, or antifreeze. In determining the size and manner in which such signs may be affixed or displayed at the retail establishment, the Department shall give consideration to the space available in such retail establishments.

E. Any person who violates any provision of subsection D shall be subject to a fine of twenty-five dollars.

§ 10.1-1423. Notice to public required.

Pertinent portions of this article shall be posted along the public highways of the Commonwealth, at public highway entrances to the Commonwealth, in all campgrounds and trailer parks, at all entrances to state parks, forest lands and recreational areas, at all public beaches, and at other public places in the Commonwealth where persons are likely

to be informed of the existence and content of this article and the penalties for violating its provisions.

§ 10.1-1424. Allowing escape of load material; penalty.

No vehicle shall be driven or moved on any highway unless the vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom. However, sand or any substance for increasing traction during times of snow and ice may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway by the Commonwealth or local government agency having that responsibility. Any person operating a vehicle from which any glass or objects have fallen or escaped which could constitute an obstruction or damage a vehicle or otherwise endanger travel upon a public highway shall immediately cause the highway to be cleaned of all glass or objects and shall pay any costs therefor. Violation of this section shall constitute a Class 1 misdemeanor.

§ 10.1-1424.1. Material containing fully halogenated chloro-fluorocarbons prohibited; penalty.

A. On and after January 1, 1992, it shall be unlawful for any distributor or manufacturer knowingly to sell or offer for sale, for purposes of resale, any packaging materials that contain fully halogenated chloro-fluorocarbons as a blowing or expansion agent.

B. Any person convicted of a violation of the provisions of this section shall be guilty of a Class 3 misdemeanor.

§ 10.1-1424.2. Products containing trichloroethylene prohibited; penalty.

As of January 1, 2004, it shall be unlawful for any person to knowingly sell or distribute for retail sale in the Commonwealth any product containing trichloroethylene if such product is manufactured for or commonly used as an adhesive for residential hardwood floor installation.

As of January 1, 2006, it shall be unlawful for any person to knowingly sell or distribute for retail sale in the Commonwealth any product manufactured on or after January 1, 2004, for any household or residential purpose if such product contains trichloroethylene. Any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

§ 10.1-1425. Preemption of certain local ordinances.

The provisions of this article shall supersede and preempt any local ordinance which attempts to regulate the size or type of any container or package containing food or beverage or which requires a deposit on a disposable container or package.

§ 10.1-1425.1. Lead acid batteries; land disposal prohibited; penalty.

A. It shall be unlawful for any person to place a used lead acid battery in mixed municipal solid waste or to discard or otherwise dispose of a lead acid battery except by delivery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or recycling facility authorized under the laws of this Commonwealth or by the United States Environmental Protection Agency. As used in this article, the term "lead acid battery" shall mean any wet cell battery.

B. It shall be unlawful for any battery retailer to dispose of a used lead acid battery except by delivery to (i) the agent of a battery wholesaler or a secondary lead smelter, (ii) a battery manufacturer for delivery to a secondary lead smelter, or (iii) a collection or recycling facility authorized under the laws of this Commonwealth or by the United States Environmental Protection Agency.

C. Any person found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars. Each battery improperly disposed of shall constitute a separate violation.

§ 10.1-1425.2. Collection of lead acid batteries for recycling.

Any person selling lead acid batteries at retail or offering lead acid batteries for retail sale in the Commonwealth shall:

1. Accept from customers, at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers; and

2. Post written notice which shall be at least 8 1/2 inches by 11 inches in size and which shall include the universal recycling symbol and the following language: (i) "It is illegal to discard a motor vehicle battery or other lead acid battery," (ii) "Recycle your used batteries," and (iii) "State law requires us to accept used motor vehicle batteries or other lead acid batteries for recycling, in exchange for new batteries purchased."

§ 10.1-1425.3. Inspection of battery retailers; penalty.

The Department shall produce, print, and distribute the notices required by § 10.1-1425.2 to all places in the Commonwealth where lead acid batteries are offered for sale at retail. In performing its duties under this section, the Department may inspect any place, building, or premise subject to the provisions of § 10.1-1425.2. Authorized employees of the Department may issue warnings to persons who fail to comply with the provisions of this article. Any person found guilty of failing to post the notice required under § 10.1-1425.2 after receiving a warning to do so pursuant to this section shall be punished by a fine of not more than fifty dollars.

§ 10.1-1425.4. Lead acid battery wholesalers; penalty.

A. It shall be unlawful for any person selling new lead acid batteries at wholesale to not accept from customers at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall be allowed a period not to exceed ninety days to remove batteries from the retail point of collection.

B. Any person found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars. Each battery unlawfully refused by a wholesaler or not removed from the retail point of collection within ninety days shall constitute a separate violation.

§ 10.1-1425.5. Construction of article.

The provisions of this article shall not be construed to prohibit any person who does not sell new lead acid batteries from collecting and recycling such batteries.

§ 10.1-1425.6. Recycling programs of state agencies.

A. It shall be the duty of each state university and state agency of the Commonwealth, including the General Assembly, to establish programs for the use of recycled materials and for the collection, to the extent feasible, of all recyclable materials used or generated by such entities, including, at a minimum, used motor oil, glass, aluminum, office paper and corrugated paper. Such programs shall be in accordance with the programs and plans developed by the Department of Waste Management, which shall serve as the lead agency for the Commonwealth's recycling efforts. The Department shall develop such programs and plans by July 1, 1991.

B. In fulfilling its duties under this section, each agency of the Commonwealth shall implement procedures for (i) the collection and storage of recyclable materials generated by such agency, (ii) the disposal of such materials to buyers, and (iii) the reduction of waste materials generated by such agency.

§ 10.1-1425.7. Duty of the Department of Business Assistance.

The Department of Business Assistance shall assist the Department by encouraging and promoting the establishment of appropriate recycling industries in the Commonwealth.

§ 10.1-1425.8. Department of Transportation; authority and duty.

The Department of Transportation is authorized to conduct recycling research projects, including the establishment of demonstration projects which use recycled products in highway construction and maintenance. Such projects may include by way of example and not by limitation the use of ground rubber from used tires or glass for road surfacing, resurfacing and sub-base materials, as well as the use of plastic or mixed plastic materials for ground or guard rail posts, right-of-way fence posts and sign supports.

The Department of Transportation shall periodically review and revise its bid procedures and specifications to encourage the use of products and materials with recycled content in its construction and maintenance programs.

The Commonwealth Transportation Commissioner may continue to provide for the collection of used motor oil and motor vehicle antifreeze from the general public at maintenance facilities in the County of Bath. The Commonwealth Transportation Commissioner may designate the source of funding for the collection and disposal of these materials.

§ 10.1-1425.9. Duties of the Department of Education.

With the assistance of the Department of Waste Management, the Department of Education shall develop by July 1, 1992, guidelines for public schools regarding (i) the use of recycled materials, (ii) the collection of recyclable materials, and (iii) the reduction of solid waste generated in such school's offices, classrooms and cafeterias.

§ 10.1-1425.10. Definition.

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

"Pollution prevention" means eliminating or reducing the use, generation or release at the source of environmental waste. Methods of pollution prevention include, but are not limited to, equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; improvements in housekeeping, maintenance, training, or inventory control; and closed-loop recycling, onsite process-related recycling, reuse or extended use of any material utilizing equipment or methods which are an integral part of a production process. The term shall not include any practice which alters the physical, chemical, or biological characteristics or the volume of an environmental waste through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service, and shall not include treatment, increased pollution control, off-site or nonprocess-related recycling, or incineration.

"Toxic or hazardous substance" means (i) all of the chemicals identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499), and (ii) all of the chemicals listed pursuant to §§ 101 (14) and 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

§ 10.1-1425.11. Establishment of pollution prevention policy.

It shall be the policy of the Commonwealth (i) that the Commonwealth should encourage pollution prevention activities by removing barriers and providing incentives and assistance, and (ii) that the generation of environmental waste should be reduced or eliminated at the source, whenever feasible; environmental waste that is generated should

be reused whenever feasible; environmental waste that cannot be reduced or reused should be recycled whenever feasible; environmental waste that cannot be reduced, reused, or recycled should be treated in an environmentally safe manner; and disposal should be employed only as a last resort and should be conducted in an environmentally safe manner. It shall also be the policy of the Commonwealth to minimize the transfer of environmental wastes from one environmental medium to another.

§ 10.1-1425.12. Pollution prevention assistance program.

The Department shall establish a voluntary pollution prevention assistance program designed to assist all persons in promoting pollution prevention measures in the Commonwealth. The program shall emphasize assistance to local governments and businesses that have inadequate technical and financial resources to obtain information and to assess and implement pollution prevention measures. The program may include, but shall not be limited to:

1. Establishment of a pollution prevention clearinghouse for all available information concerning waste reduction, waste minimization, source reduction, economic and energy savings, and pollution prevention;

2. Assistance in transferring information concerning pollution prevention technologies through workshops, conferences and handbooks;

3. Cooperation with university programs to develop pollution prevention curricula and training;

4. Technical assistance to generators of toxic or hazardous substances, including onsite consultation to identify alternative methods that may be applied to prevent pollution; and

5. Researching and recommending incentive programs for innovative pollution prevention programs.

To be eligible for onsite technical assistance, a generator of toxic or hazardous substances must agree to allow information regarding the results of such assistance to be shared with the public, provided that the identity of the generator shall be made available only with its consent and trade-secret information shall remain protected.

§ 10.1-1425.13. Pollution prevention advisory panels.

The Director is authorized to name qualified persons to pollution prevention advisory panels to assist the Department in administering the pollution prevention assistance program. Panels shall include members representing different areas of interest in and potential support for pollution prevention, including industry, education, environmental and public interest groups, state government and local government.

§ 10.1-1425.14. Pilot projects.

The Department may sponsor pilot projects to develop and demonstrate innovative technologies and methods for pollution prevention. The results of all such projects shall be available for use by the public, but trade secret information shall remain protected.

§ 10.1-1425.15. Waste exchange.

The Department may establish an industrial environmental waste material exchange that provides for the exchange, between interested persons, of information concerning (i) particular quantities of industrial environmental waste available for recovery; (ii) persons interested in acquiring certain types of industrial environmental waste for purposes of recovery; and (iii) methods for the treatment and recovery of industrial environmental waste. The industrial environmental waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of the information for similar information from a program operated in another state. The Department may contract for a private person or public entity to establish or operate the industrial environmental waste materials exchange. The Department may prescribe rules concerning the establishment and operation of the industrial environmental waste materials exchange, including the setting of subscription fees to offset the cost of participating in the exchange.

§ 10.1-1425.16. Trade secret protection.

All trade secrets obtained pursuant to this article by the Department or its agents shall be held as confidential.

§ 10.1-1425.17. Evaluation report.

The Department shall submit an annual report to the Governor and the appropriate committees of the General Assembly. The report shall include an evaluation of its pollution prevention activities. The report shall be submitted by December 1 of each year, beginning in 1994. The report shall include, to the extent available, information regarding progress in expanding pollution prevention activities in the Commonwealth.

§ 10.1-1425.18. Pollution prevention grants.

The Department may make grants to identify pollution prevention opportunities and to study or determine the feasibility of applying specific technologies and methods to prevent pollution. Persons who use, generate or release environmental waste may receive grants under this section.

§ 10.1-1425.19. Inspections and enforcement actions by the Department.

A. The Department shall seek to ensure, where appropriate, that any inspections conducted pursuant to Chapters 13 (§ 10.1-1300 et seq.) and 14 (§ 10.1-1400 et seq.) of this title and Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 (i) are multimedia in approach; (ii) are performed by teams of inspectors authorized to represent the air, water

and solid waste programs within the Department; and (iii) minimize duplication of inspections, reporting requirements, and enforcement efforts.

B. The Department may allow any person found to be violating any law or standard for which the Department has enforcement jurisdiction to develop a plan to reduce the use or generation of toxic or hazardous substances through pollution prevention incentives or initiatives and, to the maximum extent possible, implement the plan as part of coming into compliance with the violated law or standard. This shall in no way affect the Commonwealth's ability and responsibility to seek penalties in enforcement activities.

§ 10.1-1425.20. Findings and intent.

A. The General Assembly finds that:

1. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

2. Packaging comprises a significant percentage of the overall waste stream;

3. The presence of heavy metals in packaging is a concern because of the potential presence of heavy metals in residue from manufacturers' recycling processes, in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled; and

4. Lead, mercury, cadmium, and hexavalent chromium, on the basis of scientific and medical evidence, are of particular concern.

B. It is the intent of the General Assembly to:

1. Reduce the toxicity of packaging;

2. Eliminate the addition of heavy metals to packaging; and

3. Achieve reductions in toxicity without impeding or discouraging the expanded use of recovered material in the production of products, packaging, and its components.

§ 10.1-1425.21. Definitions.

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

"Distributor" means any person who takes title to products or packaging purchased for resale.

"Intentional introduction" means the act of deliberately using a regulated heavy metal in the formulation of a package or packaging component where its continued presence in the final package or packaging component is to provide a specific characteristic or quality.

The use of a regulated heavy metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, whereupon the incidental retention of a residue of the metal in the final package or packaging component is neither desired nor deliberate is not considered to be "intentional introduction" where the final package or packaging component is in compliance with subsection C of § 10.1-1425.22.

"Manufacturer" means any person that produces products, packages, packaging, or components of products or packaging.

"Package" means any container which provides a means of marketing, protecting, or handling a product, including a unit package, intermediate package, or a shipping container, as defined in the American Society for Testing and Materials (ASTM) specification D996. The term includes, but is not limited to, unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrapping and wrapping film, bags, and tubs.

"Packaging component" means any individual assembled part of a package, including, but not limited to, interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. Tin-plated steel that meets ASTM specification A-623 shall be considered as a single package component. Electro-galvanized coated steel that meets ASTM specification A-525, and hot-dipped coated galvanized steel that meets ASTM specification A-879 shall be treated in the same manner as tin-plated steel.

§ 10.1-1425.22. Schedule for removal of incidental amounts of heavy metals.

A. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in the Commonwealth a package or packaging component which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

B. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in the Commonwealth a product in a package which includes, in the package itself or in any of the packaging components, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

C. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

1. Six hundred parts per million by weight on and after July 1, 1995;

2. Two hundred fifty parts per million by weight on and after July 1, 1996; and

3. One hundred parts per million by weight on and after July 1, 1997.

D. Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using ASTM test methods, as revised, or U.S. Environmental Protection Agency Test Methods for Evaluating Solid Waste, S-W 846, as revised.

§ 10.1-1425.23. Exemptions.

The following packaging and packaging components shall be exempt from the requirements of this Act:

1. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1995;

2. Packages or packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals;

3. Packages and packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process for which there is no feasible alternative, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals. For purposes of this subdivision, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents;

4. Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recovered or recycled materials; and

5. Packages and packaging components used to contain alcoholic beverages, as defined in § 4.1-100, bottled prior to July 1, 1992.

§ 10.1-1425.24. Certificate of compliance.

A. On and after July 1, 1995, each manufacturer or distributor of packaging or packaging components shall make available to purchasers, the Department, and the public, upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this article.

B. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component that results in an increase in the level of heavy metals higher than the original certificate of compliance, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated package or packaging component.

§ 10.1-1425.25. Promulgation of regulations.

The Board may promulgate regulations if regulations are necessary to implement and manage the provisions of this article. The Director is authorized to name qualified persons to an advisory panel of affected interests and the public to assist the Department in implementing the provisions of this article.

§ 10.1-1425.26. Cathode ray tube special waste recycling program.

A. As used in this section "cathode ray tube" means an intact glass tube used to provide the visual display in televisions, computer monitors, oscilloscopes and similar scientific equipment, but does not include the other components of an electronic product containing a cathode ray tube even if the product and the cathode ray tube are disassembled.

B. The Board shall promulgate regulations to encourage cathode ray tube and electronics recycling.

C. Any locality may, by ordinance, prohibit the disposal of cathode ray tubes in any privately operated landfill within its jurisdiction, provided the locality has implemented a recycling program that is capable of handling all cathode ray tubes generated within its jurisdiction. However, no such ordinance shall contain any provision that penalizes anyone other than the initial generator of such cathode ray tubes.

§ 10.1-1426. Permits required; waiver of requirements; reports; conditional permits.

A. No person shall transport, store, provide treatment for, or dispose of a hazardous waste without a permit from the Director.

B. Any person generating, transporting, storing, providing treatment for, or disposing of a hazardous waste shall report to the Director, by such date as the Board specifies by regulation, the following: (i) his name and address, (ii) the name and nature of the hazardous waste, and (iii) the fact that he is generating, transporting, storing, providing treatment for or disposing of a hazardous waste. A person who is an exempt small quantity generator of hazardous wastes, as defined by the administrator of the

Environmental Protection Agency, shall be exempt from the requirements of this subsection.

C. Any permit shall contain the conditions or requirements required by the Board's regulations and the federal acts.

D. Upon the issuance of an emergency permit for the storage of hazardous waste, the Director shall notify the chief administrative officer of the local government for the jurisdiction in which the permit has been issued.

E. The Director may deny an application under this article on any grounds for which a permit may be amended, suspended or revoked listed under subsection A of § 10.1-1427.

F. Any locality or state agency may collect hazardous waste from exempt small quantity generators for shipment to a permitted treatment or disposal facility if done in accordance with (i) a permit to store, treat, or dispose of hazardous waste issued pursuant to this chapter or (ii) a permit to transport hazardous waste, and the wastes collected are stored for no more than 10 days prior to shipment to a permitted treatment or disposal facility. If household hazardous waste is collected and managed with hazardous wastes collected from exempt small quantity generators, all waste shall be managed in accordance with the provisions of this subsection.

§ 10.1-1427. Revocation, suspension or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board:

1. The permit holder has violated any regulation or order of the Board, any condition of a permit, any provision of this chapter, or any order of a court, where such violation (i) results in a release of harmful substances into the environment, (ii) poses a threat of release of harmful substances into the environment, (iii) presents a hazard to human health, or (iv) is representative of a pattern of serious or repeated violations which, in the opinion of the Director, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. The person to whom the permit was issued abandons, sells, leases or ceases to operate the facility permitted;

3. The facilities used in the transportation, storage, treatment or disposal of hazardous waste are operated, located, constructed or maintained in such a manner as to pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water;

4. Such protective construction or equipment as is found to be reasonable, technologically feasible and necessary to prevent substantial present or potential hazard to human health

and welfare or the environment has not been installed at a facility used for the storage, treatment or disposal of a hazardous waste; or

5. Any key personnel have been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act (§ 54.1-3400 et seq.); racketeering; violation of antitrust laws; or has 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 conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

a. The nature and details of the acts attributed to key personnel;

b. The degree of culpability of the applicant, if any;

c. The applicant's policy or history of discipline of key personnel for such activities;

d. Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;

e. Whether the applicant has implemented formal management control to minimize and prevent the occurrence of such violations; and

f. Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for the violations or other demonstrations of good behavior by the applicant that the Director finds relevant to his decision.

B. The Director may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment;

2. There is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or ground water;

3. Investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or

4. The amendment is necessary to meet changes in applicable regulatory requirements.

C. If the Director finds that hazardous wastes are no longer being stored, treated or disposed of at a facility in accordance with Board regulations, the Director may revoke the permit issued for such facility or, as a condition to granting or continuing in effect a permit, may require the person to whom the permit was issued to provide perpetual care and surveillance of the facility.

§ 10.1-1428. Financial responsibility for abandoned facilities; penalties.

A. The Board shall promulgate regulations which ensure that, if a facility in which hazardous waste is stored, treated, or disposed is closed or abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

B. Such regulations may include bonding requirements, the creation of a trust fund to be maintained within the Department, self-insurance, other forms of commercial insurance, or other mechanisms that the Department deems appropriate. Regulations governing the amount thereof shall take into consideration the potential for contamination and injury by the hazardous waste, the cost of disposal of the hazardous waste and the cost of restoring the facility to a safe condition.

C. No state agency shall be required to comply with such regulations.

D. Forfeiture of any financial obligation imposed pursuant to this section shall not relieve any holder of a permit issued pursuant to this article of any other legal obligations for the consequences of abandonment of any facility.

E. Any funds forfeited pursuant to this section and the regulations of the Board shall be paid over to the Director, who shall then expend the forfeited funds as necessary to restore and maintain the facility in a safe condition. Nothing in this section shall require the Director to expend funds from any other source to carry out the activities contemplated under this section.

F. Any person who knowingly and willfully abandons a hazardous waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who knowingly and willfully abandons a hazardous waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1429. Notice of release of hazardous substance.

Any person responsible for the release of a hazardous substance from a fixed facility which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officer or his designee of the local government of the jurisdiction in which the release occurs and shall also notify the Department.

§§ 10.1-1429.1. through 10.1-1429.3.

Repealed by Acts 2002, c. 378, cl. 2, effective July 1, 2002.

§ 10.1-1429.4.

Repealed by Acts 2002, c. 378, cl. 2, effective July 1, 2002.

§ 10.1-1430. Authority of Governor to enter into agreements with federal government; effect on federal licenses.

The Governor is authorized to enter into agreements with the federal government providing for discontinuance of the federal government's responsibilities with respect to low-level radioactive waste and the assumption thereof by the Commonwealth.

§ 10.1-1431. Authority of Board to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

A. The Board, with the prior approval of the Governor, is authorized to enter into agreements with the federal government, other states or interstate agencies, whereby the Commonwealth will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of low-level radioactive waste.

B. The Board may institute programs to train personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program of the federal government, other states or interstate agencies in furtherance of this chapter.

§ 10.1-1432. Further powers of Board.

The Board shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for low-level radioactive waste management, including lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas. In all instances lands that are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;

2. To convey or lease, for such term as in the discretion of the Board may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease if the grantee or lessee ceases to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article. However, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States;

3. To assume responsibility for perpetual custody and maintenance of radioactive waste held for custodial purposes at any publicly or privately operated facility located within the Commonwealth if the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the Board may collect fees from private or public parties holding radioactive waste for perpetual custodial purposes in order to finance such perpetual custody and maintenance as the Board may undertake. The fees shall be sufficient in each individual case to defray the estimated cost of the Board's custodial management activities for that individual case. All such fees, when received by the Board, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations; and

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used as custodial sites for radioactive waste.

§ 10.1-1433. Definitions.

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

"Applicant" means the person applying for a certification of site suitability or submitting a notice of intent to apply therefor.

"Application" means an application to the Board for a certification of site suitability.

"Certification of site suitability" or "certification" means the certification issued by the Board pursuant to this chapter.

"Criteria" means the criteria adopted by the Board, pursuant to § 10.1-1436.

"Fund" means the Technical Assistance Fund created pursuant to § 10.1-1448.

"Hazardous waste facility" or "facility" means any facility, including land and structures, appurtenances, improvements and equipment for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii) facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; (iii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works.

"Hazardous waste management facility permit" means the permit for a hazardous waste management facility issued by the Director or the U.S. Environmental Protection Agency.

"Host community" means any county, city or town within whose jurisdictional boundaries construction of a hazardous waste facility is proposed.

"On-site" means facilities that are located on the same or geographically contiguous property which may be divided by public or private right-of-way, and the entrance and exit between the contiguous properties is at a cross-roads intersection so that the access is by crossing, as opposed to going along, the right-of-way. On-site also means noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

"Operator" means a person who is responsible for the overall operation of a facility.

"Owner" means a person who owns a facility or a part of a facility.

"Storage" means the containment or holding of hazardous wastes pending treatment, recycling, reuse, recovery or disposal.

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

§ 10.1-1434. Additional powers and duties of the Board.

A. In addition to its other powers and duties, with regard to hazardous waste the Board shall have the power and duty to:

1. Require that hazardous waste is treated, stored and disposed of properly;

2. Provide information to the public regarding the proper methods of hazardous waste disposal;

3. Establish procedures, where feasible, to eliminate or reduce the disproportionate burden which may be placed on a community in which is located a hazardous waste treatment, storage or disposal facility, by any means appropriate, including mitigation or compensation;

4. Require that the Department compiles, maintains, and makes available to the public, information on the use and availability of conflict resolution techniques so that controversies and conflicts over the local impacts of hazardous waste facility siting decisions may be resolved by negotiation, mediation or similar techniques;

5. Encourage, whenever possible, alternatives to land burial of hazardous wastes, which will reduce, separate, neutralize, recycle, exchange or destroy hazardous wastes; and

6. Regulate hazardous waste treatment, storage and disposal facilities and require that the costs of long-term post-closure care and maintenance of these facilities is born by their owners and operators.

B. In addition to its other powers and duties, with regard to certification of hazardous waste facility sites the Board shall have the power and duty to:

1. Subject to the approval of the Governor, request the use of the resources and services of any state department or agency for technical assistance in the performance of the Board's duties;

2. Hold public meetings or hearings on any matter related to the siting of hazardous waste facilities;

3. Coordinate the preparation of and to adopt criteria for the siting of hazardous waste facilities;

4. Grant or deny certification of site approval for construction of hazardous waste facilities;

5. Promulgate regulations and procedures for approval of hazardous waste facility sites;

6. Adopt a schedule of fees to charge applicants and to collect fees for the cost of processing applications and site certifications; and

7. Perform any acts authorized by this chapter under, through or by means of its own officers, agents and employees, or by contract with any person.

§ 10.1-1435. Certification of site approval required; "construction" defined; remedies.

A. No person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the Board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than fifty percent of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the Board, result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

B. Upon receiving a written request from the owner or operator of the facility, the Board may allow, without going through the procedures of this article, any changes in the facilities which are designed to:

1. Prevent a threat to human health or the environment because of an emergency situation;

2. Comply with federal or state laws and regulations; or

3. Demonstrably result in safer or environmentally more acceptable processes.

C. Any person violating this section may be enjoined by the circuit court of the jurisdiction wherein the facility is located or the proposed facility is to be located. Such an action may be instituted by the Board, the Attorney General, or the political subdivision in which the violation occurs. In any such action, it shall not be necessary for the plaintiff to plead or prove irreparable harm or lack of an adequate remedy at law. No person shall be required to post any injunction bond or other security under this section. No action may be brought under this section after a certification of site approval has been issued by the Board, notwithstanding the pendency of any appeals or other challenges to the Board's action. In any action under this section, the court may award reasonable costs of litigation, including attorney and expert witness fees, to any party if the party substantially prevails on the merits of the case and if in the determination of the court the party against whom the costs are awarded has acted unreasonably.

§ 10.1-1436. Site approval criteria.

A. The Board shall promulgate criteria for approval of hazardous waste facility sites. The criteria shall be designed to prevent or minimize the location, construction, or operation of a hazardous waste facility from resulting in (i) any significant adverse impact on the environment and natural resources, and (ii) any significant adverse risks to public health, safety or welfare. The criteria shall also be designed to eliminate or reduce to the extent

practicable any significant adverse impacts on the quality of life in the host community and the ability of its inhabitants to maintain quiet enjoyment of their property. The criteria shall ensure that previously approved local comprehensive plans are considered in the certification of hazardous waste facility sites.

B. To avoid, to the maximum extent feasible, duplication with existing agencies and their areas of responsibility, the criteria shall reference, and the Board shall list in the draft and final certifications required hereunder, the agency approvals required and areas of responsibility concerning a site and its operation. The Board shall not review or make findings concerning the adequacy of those agency approvals and areas of responsibility.

C. The Board shall make reasonable efforts to reduce or eliminate duplication between the criteria and other applicable regulations and requirements.

D. The criteria may be amended or modified by the Board at any time.

§ 10.1-1437. Notice of intent to file application for certification of site approval.

A. Any person may submit to the Board a notice of intent to file an application for a certification of site approval. The notice shall be in such form as the Board may prescribe by regulation. Knowingly falsifying information, or knowingly withholding any material information, shall void the notice and shall constitute a felony punishable by confinement in the penitentiary for one year or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months, a fine of not more than $10,000, or both.

Any state agency filing a notice of intent shall include therein a statement explaining why the Commonwealth desires to build a hazardous waste facility and how the public interest would be served thereby.

B. Within forty-five days of receipt of such a notice, the Board shall determine whether it is complete. The Board shall reject any incomplete notice, advise the applicant of the information required to complete it, and allow reasonable time to correct any deficiencies.

C. Upon receipt of the notice, the Board, at the applicant's expense, shall:

1. Deliver or cause to be delivered a copy of the notice of intent together with a copy of this article to the governing body of each host community and to each person owning property immediately adjoining the site of the proposed facility; and

2. Have an informative description of the notice published in a newspaper of general circulation in each host community once each week for four successive weeks. The description shall include the name and address of the applicant, a description of the proposed facility and its location, the places and times where the notice of intent may be examined, the address and telephone number of the Board or other state agency from

which information may be obtained, and the date, time and location of the initial public briefing meeting on the notice.

§ 10.1-1438. Powers of governing body of host community; technical assistance.

A. The governing body of a host community shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host community in matters pertaining to the siting of the facility;

2. Receive and disburse moneys from the fund, and any other moneys as may be available; and

3. Enter into a contract, which may be assignable at the parties' option, binding upon the governing body of the host community and enforceable against it and future governing bodies of the host community in any court of competent jurisdiction, with an applicant by signing a siting agreement pursuant to § 10.1-1442.

B. The Board shall make available to the governing body from the fund a reasonable sum of money to be determined by the Board. This shall be used by the governing body to hire consultants to provide it with technical assistance and information necessary to aid the governing body in its review of the siting proposal, negotiations with the applicant and the development of a siting agreement.

Unused moneys from the fund shall be returned to the Board. The governing body shall provide the Board with a certified accounting statement of any moneys expended from the fund.

C. The governing body of the host community may appoint a local advisory committee to facilitate communication and the exchange of information among the local government, the community, the applicant and the Board.

D. Notwithstanding the foregoing provisions of this article, the governing body of a host community may notify the Board, within fifteen days after the briefing meeting pursuant to § 10.1-1439, that it has elected to waive further participation under the provisions of this article. After receiving notification from the host community, the Board may issue certification of site approval without further participation by the host community under the provisions of this section and § 10.1-1442. Nothing shall prevent a host community from submitting comments on the application or participating in any public hearing or meeting held pursuant to this chapter, nor shall the host community be precluded from enforcing its regulations and ordinances as provided by subsection G of § 10.1-1446.

§ 10.1-1439. Briefing meetings.

A. Not more than seventy-five nor less than sixty days after the delivery of the notice of intent to the host community, the Board shall conduct a briefing meeting in or in

reasonable proximity to the host community. A quorum of the Board shall be present. Notice of the date, time, place and purpose of the briefing session shall be prepared by the Board and shall accompany the notice of intent delivered pursuant to subdivision 1 of subsection C of § 10.1-1437 and shall be included in the notice published pursuant to subdivision 2 of subsection C of § 10.1-1437.

At least one representative of the applicant shall be present at the briefing meeting.

The Board shall adopt procedures for the conduct of briefing meetings. The briefing meeting shall provide information on the proposed site and facility and comments, suggestions and questions thereon shall be received.

B. The Board may conduct additional briefing meetings at any time in or near a host community, provided that at least fifteen days in advance of a meeting, notice of the date, time, place and purpose of the meeting is delivered in writing to the applicant, each member of the governing body and to all owners of property adjoining the proposed site.

C. A stenographic or electronic record shall be made of all briefing meetings. The record shall be available for inspection during normal business hours.

§ 10.1-1440. Impact analysis.

A. The applicant shall submit to the Board a draft impact analysis for the proposed facility within ninety days after the initial briefing meeting. At the applicant's expense, copies of the draft impact analysis shall be furnished as follows: five to the host community, and one to each person owning property adjoining the site of the proposed facility. At least one copy shall be made available at a convenient location in the host community for public inspection and copying during normal business hours.

B. The draft impact analysis shall include a detailed assessment of the project's suitability with respect to the criteria and other information the Board may require by regulation.

C. The Board, at the applicant's expense, shall cause notice of the filing of the draft impact analysis to be made in the manner provided in § 10.1-1447 within ten days of receipt. The notice shall include (i) a general description of the analysis, (ii) a list of recipients, (iii) a description of the places and times that the analysis will be available for inspection, (iv) a description of the Board's procedures for receiving comments on the analysis, and (v) the addresses and telephone numbers for obtaining information from the Board.

D. The Board shall allow forty-five days after publication of notice for comment on the draft impact analysis. No sooner than thirty and no more than forty days after publication of notice of the draft impact analysis, the Board shall conduct a public meeting on the draft impact analysis in or near the host community. The meeting shall be for the purpose of explaining, answering questions and receiving comments on the draft impact analysis.

A representative of the governing body and a representative of the applicant shall be present at the meeting.

E. Within ten days after the close of the comment period, the Board shall forward to the applicant a copy of all comments received on the draft impact analysis, together with its own comments.

F. The applicant shall prepare and submit a final impact analysis to the Board after receiving the comments. The final impact analysis shall reflect the comments as they pertain to each of the items listed in subsection B of this section. Upon request, a copy of the final impact analysis shall be provided by the applicant to each of the persons who received the draft impact analysis.

G. This section shall not apply when the host community has elected to waive participation under subsection D of § 10.1-1438.

§ 10.1-1441. Application for certification of site approval.

A. At any time within six months after submission of the final impact analysis, the applicant may submit to the Board an application for certification of site approval. The application shall contain:

1. Conceptual engineering designs for the proposed facility;

2. A detailed description of the facility's suitability to meet the criteria promulgated by the Board, including any design and operation measures that will be necessary or otherwise undertaken to meet the criteria; and

3. A siting agreement, if one has been executed pursuant to subsection C of § 10.1-1442, or, if none has been executed, a statement to that effect.

B. The application shall be accompanied by whatever fee the Board, by regulation, prescribes pursuant to § 10.1-1434.

C. The Board shall review the application for completeness and notify the applicant within fifteen days of receipt that the application is incomplete or complete.

If the application is incomplete, the Board shall advise the applicant of the information necessary to make the application complete. The Board shall take no further action until the application is complete.

If the application is complete, the Board shall direct the applicant to furnish copies of the application to the following: five to the host community, one to the Director, and one to each person owning property adjoining the proposed site. At least one copy of the application shall be made available by the applicant for inspection and copying at a convenient place in a host community during normal business hours.

D. The Board shall cause notice of the application to be made in the manner provided in § 10.1-1447 and shall notify each governing body that upon publication of the notice the governing body shall conclude all negotiations with the applicant within thirty days of publication of the notice. The applicant and the governing body may, by agreement, extend the time for negotiation to a fixed date and shall forthwith notify the Board of this date. The Board may also extend the time to a fixed date for good cause shown.

If the host community has waived participation under the provisions of subsection D of § 10.1-1438, the Board shall, at the time that notice of the application is made, request that the governing body submit, within thirty days of receiving notice, a report meeting the requirements of subdivision 2 of subsection E of this section.

E. At the end of the period specified in subsection D of this section, a governing body shall submit to the Board and to the applicant a report containing:

1. A complete siting agreement, if any, or in case of failure to reach full agreement, a description of points of agreement and unresolved points; and

2. Any conditions or restrictions on the construction, operation or design of the facility that are required by local ordinance.

F. If the report is not submitted within the time required, the Board may proceed as specified in subsection A of § 10.1-1443.

G. The applicant may submit comments on the report of the governing body at any time prior to the issuance of the draft certification of site approval.

H. Notwithstanding any other provision of this chapter, if the host community has notified the Board, pursuant to subsection D of § 10.1-1438, that it has elected to waive further participation hereunder, the Board shall so notify the applicant within fifteen days of receipt of notice from the host community, and shall advise the applicant of the time for submitting its application for certification of site approval. The applicant shall submit its application within the time prescribed by the Board, which time shall not be less than ninety days unless the applicant agrees to a shorter time.

§ 10.1-1442. Negotiations; siting agreement.

A. The governing body or its designated representatives and the applicant, after submission of notice of intent to file an application for certification of site approval, may meet to discuss any matters pertaining to the site and the facility, including negotiations of a siting agreement. The time and place of any meeting shall be set by agreement, but at least forty-eight hours' notice shall be given to members of the governing body and the applicant.

B. The siting agreement may include any terms and conditions, including mitigation of adverse impacts and financial compensation to the host community, concerning the facility.

C. The siting agreement shall be executed by the signatures of (i) the chief executive officer of the host community, who has been so directed by a majority vote of the local governing body, and (ii) the applicant or authorized agent.

D. The Board shall assist in facilitating negotiations between the local governing body and the applicant.

E. No injunction, stay, prohibition, mandamus or other order or writ shall lie against the conduct of negotiations or discussions concerning a siting agreement or against the agreement itself, except as they may be conducted in violation of the provisions of this chapter or any other state or federal law.

§ 10.1-1443. Draft certification of site approval.

A. Within thirty days after receipt of the governing body's report or as otherwise provided in subsection F of § 10.1-1441, the Board shall issue or deny a draft certification of site approval.

When application is made pursuant to subsection H of § 10.1-1441, the Board shall issue or deny draft certification of site approval within ninety days after receipt of the completed application.

B. The Board may deny the application for certification of site approval if it finds that the applicant has failed or refused to negotiate in good faith with the governing body for the purpose of attempting to develop a siting agreement.

C. The draft certification of site approval shall specify the terms, conditions and requirements that the Board deems necessary to protect health, safety, welfare, the environment and natural resources.

D. Copies of the draft certification of site approval, together with notice of the date, time and place of public hearing required under § 10.1-1444, shall be delivered by the Board to the governing body of each host community, and to persons owning property adjoining the site for the proposed facility. At least one copy of the draft certification shall be available at a convenient location in the host community for inspection and copying during normal business hours.

§ 10.1-1444. Public hearing on draft certification of site approval.

A. The Board shall conduct a public hearing on the draft certification not less than fifteen nor more than thirty days after the first publication of notice. A quorum of the Board shall be present. The hearing shall be conducted in the host community.

B. Notice of the hearing shall be made at the applicant's expense and in the manner provided in § 10.1-1447. It shall include:

1. A brief description of the terms and conditions of the draft certification;

2. Information describing the date, time, place and purpose of the hearing;

3. The name, address and telephone number of an official designated by the Board from whom interested persons may obtain access to documents and information concerning the proposed facility and the draft application;

4. A brief description of the rules and procedures to be followed at the hearing and the time for receiving comments; and

5. The name, address and telephone number of an official designated by the Board to receive written comments on the draft certification.

C. The Board shall designate a person to act as hearing officer for the receipt of comments and testimony at the public hearing. The hearing officer shall conduct the hearing in an expeditious and orderly fashion, according to such rules and procedures as the Board shall prescribe.

D. A transcript of the hearing shall be made and shall be incorporated into the hearing record.

E. Within fifteen days after the close of the hearing, the hearing officer shall deliver a copy of the hearing record to each member of the Board. The hearing officer may prepare a summary to accompany the record, and this summary shall become part of the record.

§ 10.1-1445. Final decision on certification of site approval.

A. Within forty-five days after the close of the public hearing, the Board shall meet within or near the host community and shall vote to issue or deny the certification of site approval. The Board may include in the certification any terms and conditions which it deems necessary and appropriate to protect and prevent injury or adverse risk to health, safety, welfare, the environment and natural resources. At least seven days' notice of the date, time, place and purpose of the meeting shall be made in the manner provided in § 10.1-1447. No testimony or evidence will be received at the meeting.

B. The Board shall grant the certification of site approval if it finds:

1. That the terms and conditions thereof will protect and prevent injury or unacceptable adverse risk to health, safety, welfare, the environment and natural resources;

2. That the facility will comply and be consistent with the criteria promulgated by the Board; and

3. That the applicant has made reasonable and appropriate efforts to reach a siting agreement with the host community including, though not limited to, efforts to mitigate or compensate the host community and its residents for any adverse economic effects of the facility. This requirement shall not apply when the host community has waived participation pursuant to subsection D of § 10.1-1438.

C. The Board's decision to grant or deny certification shall be based on the hearing record and shall be accompanied by the written findings of fact and conclusions upon which the decision was based. The Board shall provide the applicant and the governing body of the host community with copies of the decision, together with the findings and conclusions, by certified mail.

D. The grant or denial of certification shall constitute final action by the Board.

§ 10.1-1446. Effect of certification.

A. Grant of certification of site approval shall supersede any local ordinance or regulation that is inconsistent with the terms of the certification. Nothing in this chapter shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the certification of site approval. Grant of certification shall not preclude or excuse the applicant from the requirement to obtain approval or permits under this chapter or other state or federal laws. The certification shall continue in effect until it is amended, revoked or suspended.

B. The certification may be amended for cause under procedures and regulations prescribed by the Board.

C. The certification shall be terminated or suspended (i) at the request of the owner of the facility; (ii) upon a finding by the Board that conditions of the certification have been violated in a manner that poses a substantial risk to health, safety or the environment; (iii) upon termination of the hazardous waste facility permit by the Director or the EPA Administrator; or (iv) upon a finding by the Board that the applicant has knowingly falsified or failed to provide material information required in the notice of intent and application.

D. The facility owner shall promptly notify the Board of any changes in the ownership of the facility or of any significant changes in capacity or design of the facility.

E. Nothing in the certification shall constitute a defense to liability in any civil action involving private rights.

F. The Commonwealth may not acquire any site for a facility by eminent domain prior to the time certification of site approval is obtained. However, any agency or representative of the Commonwealth may enter upon a proposed site pursuant to the provisions of § 25.1-203.

G. The governing body of the host community shall have the authority to enforce local regulations and ordinances to the extent provided by subsection A of this section and the terms of the siting agreement. The local governing body may be authorized by the Board to enforce specified provisions of the certification.

§ 10.1-1447. Public participation; notice.

A. Public participation in the development, revision and implementation of regulations and programs under this chapter shall be provided for, encouraged and assisted by the Board.

B. Whenever notice is required to be made under the terms of this chapter, unless the context expressly and exclusively provides otherwise, it shall be disseminated as follows:

1. By publication once each week for two successive weeks in a newspaper of general circulation within the area to be affected by the subject of the notice;

2. By broadcast over one or more radio stations within the area to be affected by the subject of the notice;

3. By mailing to each person who has asked to receive notice; and

4. By such additional means as the Board deems appropriate.

C. Every notice shall provide a description of the subject for which notice is made and shall include the name and telephone number of a person from whom additional information may be obtained.

§ 10.1-1448. Technical Assistance Fund.

A special fund, to be known as the Technical Assistance Fund, is created in the Office of the State Treasurer. The Fund shall consist of appropriations made to the Fund by the General Assembly. The Board shall make moneys from the Fund available to any host community for the purposes set out in subsection C of § 10.1-1438.

§ 10.1-1449. Siting Dedicated Revenue Fund.

There is hereby established in the state treasury a special dedicated revenue fund to be designated as the "Siting Dedicated Revenue Fund," which shall consist of fees and other payments made by applicants to process applications for site certification as provided in § 10.1-1434, and other moneys appropriated thereto, gifts, grants, and the interest accruing thereon.

§ 10.1-1450. Waste Management Board to promulgate regulations regarding hazardous materials.

The Board shall promulgate regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported. Such regulations shall be no more restrictive than any applicable federal laws or regulations.

§ 10.1-1451. Enforcement of article and regulations.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Transportation, in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this article, and any rule or regulation promulgated hereunder. Those law-enforcement officers certified to enforce the provisions of this article and any regulation promulgated hereunder, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials.

§ 10.1-1452. Article not to preclude exercise of certain regulatory powers.

The provisions of this article shall not preclude the exercise of the statutory and regulatory powers of any agency, department or political subdivision of the Commonwealth having statutory authority to regulate hazardous materials on specified highways or portions thereof.

§ 10.1-1453. Exceptions.

This article shall not apply to regular military or naval forces of the United States, the duly authorized militia of any state or territory thereof, police or fire departments, or sheriff's offices and regional jails of this Commonwealth, provided the same are acting within their official capacity and in the performance of their duties, or to the transportation of hazardous radioactive materials in accordance with § 44-146.30.

§ 10.1-1454. Transportation under United States regulations.

Any person transporting hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of this article, except when such transportation is excluded from regulation under the laws or regulations of the United States.

§ 10.1-1454.1. Regulation of wastes transported by water.

A. The Board shall develop regulations governing the commercial transport, loading and off-loading of nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge,

and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth as are necessary to protect the health, safety, and welfare of the citizens of the Commonwealth and to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction. Included in the regulations shall be provisions governing (i) the issuance of permits by rule to facilities receiving nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth and (ii) to the extent allowable under federal law and regulation, the commercial transport of nonhazardous solid wastes (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste upon the navigable waters of the Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such waste.

B. 1. Included in the regulations shall be requirements, to the extent allowable under federal law, that: (a) containers holding wastes be watertight and be designed, constructed, secured and maintained so as to prevent the escape of wastes, liquids and odors and to prevent the loss or spillage of wastes in the event of an accident; (b) containers be tested at least two times a year and be accompanied by a certification from the container owner that such testing has shown that the containers are watertight; (c) each container be listed on a manifest designed to assure that the waste being transported in each container is suitable for the destination facility; and (d) containers be secured to the barges to prevent accidents during transportation, loading and unloading.

2. For the purposes of this section and the regulations promulgated hereunder, a container shall satisfy clauses (a) and (b) of subdivision B 1, if it meets the following requirements:

a. Each container shall be certified for special service by a Delegated Approval Authority approved by the U.S. Coast Guard in accordance with 49 CFR Parts 450 through 453 as having met the requirements for the approval of prototype containers described in §§ 1.5 and 1.17.2 of the Rules for Certification of Cargo Containers, 1998, American Bureau of Shipping, including a special container prototype test as follows: a minimum internal head of three inches of water shall be applied to all sides, seams, bottom and top of the container for at least 15 minutes of each side, seam, bottom and top, during which the container shall remain free from the escape of water.

b. Each container shall be certified by the Delegated Approval Authority as having passed the following test when the container is placed in service and at least once every six months thereafter while it remains in service:

(1) Each container shall have a minimum internal head of 24 inches of water applied to the container in an upright position for at least 15 minutes during which the container shall remain free from the escape of water. All wastewater and contaminated water

resulting from this test procedure shall be disposed of in compliance with the applicable regulations of the State Water Control Board.

(2) Each container shall be visually inspected for damage on all sides, plus the top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.

c. Following each unloading of solid waste from a container, each container shall be visually inspected, as practical, at the solid waste management facility immediately upon unloading for damage on all sides, plus top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.

3. It shall be a violation of this chapter if during transportation, holding, or storage operations, or in the event of an accident, there is an: (i) entry of liquids into a container; (ii) escape, loss, or spillage of wastes or liquids from a container; or (iii) escape of odors from a container.

C. A facility utilized to receive nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, or regulated medical waste from a ship, barge or other vessel regulated pursuant to subsection A, arriving at the facility upon the navigable waters of the Commonwealth, is a solid waste management facility and is subject to the requirements of this chapter. On and after the effective date of the regulations promulgated under subsection A, no new or existing facilities shall receive any wastes regulated under subsection A from a ship, barge or other vessel without a permit issued in accordance with the Board's regulations.

D. 1. The Board shall, by regulation, establish a fee schedule, payable by the owner or operator of any ship, barge or other vessel carrying, loading or off-loading waste regulated under this article on the navigable waters of the Commonwealth, for the purpose of funding the administrative and enforcement costs of this article associated with such operations including, but not limited to, the inspection and monitoring of such ships, barges or other vessels to ensure compliance with this article, and for funding activities authorized by this section to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

2. The owner or operator of a facility permitted to receive wastes regulated under this article from a ship, barge or other vessel shall be assessed a permit fee in accordance with the criteria set forth in § 10.1-1402.1. However, such fees shall also include an additional amount to cover the Department's costs for facility inspections that it shall conduct on at least a quarterly basis.

3. The fees collected pursuant to this article shall be deposited into a separate account within the Virginia Waste Management Board Permit Program Fund (§ 10.1-1402.2) and shall be treated as are other moneys in that fund except that they shall only be used for

the purposes of this article, and for funding purposes authorized by this article to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

E. The Board shall promulgate regulations requiring owners and operators of ships, barges and other vessels transporting wastes regulated under this article to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Regulations governing the amount of any financial responsibility required shall take into consideration: (i) the risk of potential damage or injury to state waters and the impairment of beneficial uses that may result from spillage or leakage from the ship, barge or vessel; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or interference with general health, welfare and property that may result.

F. The owner or operator of a ship, barge or other vessel from which there is spillage or loss to state waters of wastes subject to regulations under this article shall immediately report such spillage or loss in accordance with the regulations of the Board and shall immediately take all such actions as may be necessary to contain and remove such wastes from state waters.

G. No person shall transport wastes regulated under this article on the navigable waters of the Commonwealth by ship, barge or other vessel unless such ship, barge or vessel and the containers carried thereon are designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of an accident. A violation of this subsection shall be a Class 1 misdemeanor. For the purposes of this subsection, the term "odors" means any emissions that cause an odor objectionable to individuals of ordinary sensibility.

H. The Director may grant variances for the commercial transport, loading, and off-loading of solid waste on waters of the Commonwealth from the requirements of this section provided: (i) travel on state waters is minimized; (ii) the solid waste is easily identifiable, is not hazardous, and is containerized so as to prevent the escape of liquids, waste, and odors; (iii) the containers are secured to the vessel to prevent spillage; (iv) the amount of solid waste transported does not exceed 300 tons annually; and (v) the activity will not occur when weather conditions pose a risk of the vessel losing its load.

§ 10.1-1454.2.

Repealed by Acts 2003, c. 830.

Article 7.2 (§ 10.1-1454.3) of Chapter 14 of Title 10.1 of the Code of Virginia is repealed.

§ 10.1-1455. Penalties and enforcement.

A. Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than $32,500 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

B. In addition to the penalties provided above, 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 $32,500 for each violation, either or both. The provisions of this subsection shall be deemed to constitute a lesser included offense of the violation set forth under subsection I.

Each day of violation of each requirement shall constitute a separate offense.

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, as defined in § 2.2-4001, of the Board or Director. Any such order shall be issued only after a hearing in accordance with § 2.2-4020 with at least 30 days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 10.1-1402.

D. 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 this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the Board or the Director to obey such regulation, permit, certification, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

E. 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 $32,500 for each violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

F. 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 this chapter, 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 this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

G. 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 this chapter; or (iii) any case decision or order of the Board. Issuance of an administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued pursuant to this subsection may include civil penalties of up to $32,500 per violation not to exceed $100,000 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. The Board may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental

Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. 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 10 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.

H. In addition to all other available remedies, the Department and generators of recycling residues shall have standing to seek enforcement by injunction of conditions which are specified by applicants in order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

I. 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 15 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 $1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

J. Criminal prosecutions under this chapter shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

K. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

L. The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or

actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

§ 10.1-1456. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Director or Department, any regulations of the Board, any order of the Board or Director or any conditions in a permit, license or certificate issued by the Board or Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

§ 10.1-1457. Judicial review.

A. Except as provided in subsection B, any person aggrieved by a final decision of the Board or Director under this chapter shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by the submittal of written comments, in the public comment process related to a final decision of the Board or Director under § 10.1-1408.1 or § 10.1-1426 and who has exhausted all available administrative remedies for review of the Board's or Director's decision, shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

§ 10.1-1500. Compact entered into and enacted into law.

The Commonwealth of Virginia hereby enters into and enacts into law the Southeast Interstate Low-Level Radioactive Waste Management Compact to become a party to the compact with the parties and upon the conditions named therein, which compact shall be in the form which follows and which as initially enacted in this section is as agreed to September 10, 1982.

ARTICLE I. POLICY AND PURPOSE

There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the state for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposal of such wastes. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort, provide sufficient facilities for the proper management of low-level radioactive waste generated in the region, promote the health and safety of the region, limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region, encourage the reduction of the amounts of low-level waste generated in the region, distribute the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states, and ensure the ecological management of low-level radioactive wastes.

Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws; and

2. Imposing sanctions against those found to be in violation of federal rules, regulations and laws; and

3. Timely inspections of their licensees to determine their capability to adhere to such rules, regulations and laws; and

4. Timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act as amended.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Commission" or "Compact Commission" means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

b. "Facility" means a parcel of land, together with the structures, equipment and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.

c. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage or disposal of wastes with respect to such waste generated outside the region.

d. "High-level waste" means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel and solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

e. "Host state" means any state in which a regional facility is situated or is being developed.

f. "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in section 11 e. (2) of the Atomic Energy Act of 1954, or as may be further defined by federal law or regulation.

g. "Party state" means any state which is a signatory party to this compact.

h. "Person" means any individual, corporation, business enterprise or other legal entity (either public or private).

i. "Region" means the collective party states.

j. "Regional facility" means (1) a facility as defined in this article which has been designated, authorized, accepted or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

k. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

l. "Transuranic wastes" means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement under section 274 of the Atomic Energy Act of 1954.

m. "Waste management" means the storage, treatment or disposal of waste.

ARTICLE III. RIGHTS AND OBLIGATIONS

The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit or abridge those rights.

a. Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable at regional facilities, and additionally shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article IV e. 9. The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

b. If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state(s) and approved by a two-thirds vote of the Commission.

c. Each party state shall establish the capability to regulate, license and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post closure observation and maintenance, and the extended institutional control of their regional facilities, in accordance with the provisions of Article V, section b.

d. Each party state shall establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

e. Each party state shall provide to the Commission on an annual basis, any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligation herein defined.

f. Each party state shall, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of wastes requiring disposal.

ARTICLE IV. THE COMMISSION

a. There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission ("the Commission" or "Compact Commission"). The

Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

b. Each Commission member shall be entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.

c. The Commission shall elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, by-laws which are consistent with this compact.

d. The Commission shall meet at least once a year and shall also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission shall be open to the public.

e. The Commission has the following duties and powers:

1. To receive and approve the application of a non-party state to become an eligible state in accordance with Article VII b.; and

2. To receive and approve the application of an eligible state to become a party state in accordance with Article VII c.; and

3. To submit an annual report and other communications to the governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission; and

4. To develop and use procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region; and

5. To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities; and

6. To develop and adopt within one year after the Commission is constituted as provided for in Article VII, section d., procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this article. In accordance with these procedures and criteria, the Commission shall identify a host state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article VII, section d. and shall seek to

ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.

In developing criteria, the Commission must consider the following: the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic and ecological impacts on the air, land, and water resources of the party states.

The Commission shall conduct such hearings; require such reports, studies, evidence and testimony; and do what is required by its approved procedures in order to identify a party state as a host state for a needed facility; and

7. In accordance with the procedures and criteria developed pursuant to section e. 6. of this article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility; and

8. To require of and obtain from party states, eligible states seeking to become party states, and non-party states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities; and

9. Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both representatives of the host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facilities' capability to handle such wastes; and

10. To act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states, as an intervenor or party in interest before Congress, state legislatures, any court of law, or federal, state or local agency, board or commission which has jurisdiction over the management of wastes.

The authority to act, intervene or otherwise appear shall be exercised by the Commission only after approval by a majority vote of the Commission.

11. To revoke the membership of a party state in accordance with Article VII f.

f. The Commission may establish such advisory committees as it deems necessary for the purpose of advising the Commission on any and all matters pertaining to the management of low-level radioactive waste.

g. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

h. Funding for the Commission shall be provided as follows:

1. Each eligible state, upon becoming a party state, shall pay $25,000 to the Commission which shall be used for costs of the Commission's services.

2. Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

(a) Shall be sufficient to cover the annual budget of the Commission; and

(b) Shall represent the financial commitments of all party states to the Commission; and

(c) Shall be paid to the Commission, provided, however, that each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

3. The Commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities shall begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states, and shall remit to the Commission funds resulting from collection of such special fees and surcharges within sixty days of their receipt.

i. The Commission shall keep accurate accounts of all receipts and disbursements and independent certified public accountant shall annually audit all receipts and disbursements of Commission funds, and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by Article IV e. 3.

j. The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this paragraph together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

k. The Commission shall not be responsible for any costs associated with (1) the creation of any facility, (2) the operation of any facility, (3) the stabilization and closure of any facility, (4) the post-closure observation, and maintenance of any facility, or (5) the extended institutional control, after post-closure observation and maintenance of any facility.

l. As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within non-party states when authorized by the Commission pursuant to the provisions of this Compact. After January 1, 1986, the Commission may prohibit the exportation of waste from the region for the purposes of management.

m. 1. The Commission herein established is a legal entity separate and distinct from the party states, capable of acting in its own behalf, and shall be so liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for action taken by them in their official capacity.

Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any causal or other relationships. Generators, transporters of wastes, owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

ARTICLE V. DEVELOPMENT AND OPERATION OF FACILITIES

a. Any party state which becomes a host state in which a regional facility is operated, shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

b. A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefore. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines Congress has materially altered the conditions of this compact.

c. Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

d. No party state shall have any form of arbitrary prohibition on the treatment, storage or disposal of low-level radioactive waste within its border.

e. No party state shall be required to operate a regional facility for longer than a twenty-year period or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.

ARTICLE VI. OTHER LAWS AND REGULATIONS

a. Nothing in this compact shall be construed to:

1. Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under section 274 of the Atomic Energy Act of 1954 in which a regional facility is located;

3. Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact;

4. Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except that any such facility shall comply with Article III, Article IV and Article V and shall be subject to any action lawfully taken pursuant thereto;

5. Prohibit any storage or treatment of waste by the generator on its own premises;

6. Affect any judicial or administrative proceeding pending on the effective date of this compact;

7. Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions;

8. Affect the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or federal research and development activities as defined in P.L. 96-573;

9. Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

b. No party state shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.

c. Upon formation of the compact, no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more

inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

d. Restrictions of waste management of regional facilities pursuant to Article IV l. shall be enforceable as a matter of state law.

ARTICLE VII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

a. This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

b. Any state not expressly declared eligible to become a party state to this compact in section a. of this article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to the provisions of this section. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the same manner as those states declared eligible in section a. of this article.

c. Each state eligible to become a party state shall be declared a party state upon enactment of this compact into law by the state and upon payment of the fees required by Article IV, h. 1. The Commission shall be the sole judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

d. 1. The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article IV, h. 1. shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the Commission and implement the provisions of this compact.

2. All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section c. of this article.

3. The consent of the Congress shall be required for full implementation of this compact. The provisions of Article V, d. shall not become effective until the effective date of the import ban authorized by Article IV, l. as approved by Congress. The Congress may by law withdraw its consent only every five years.

e. No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

f. Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only on the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than 90 days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

The Commission shall, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action along with a copy of the resolution to the governors, the presidents of the senates, and the speakers of the house of representatives of the party states, as well as chairmen of the appropriate committees of the Congress.

g. Subject to provisions of Article VII, h., any party state may withdraw from this compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the governor of such party state of the rescission of the compact. The Commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the governors, the presidents of the senates, and the speakers of the house of representatives of the party states as well as the chairman of the appropriate committees of the Congress.

h. The right of a party state to withdraw pursuant to Article VII, g. shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter a party state may withdraw only with the unanimous approval of the Commission and with the consent of Congress. For purposes of this subsection, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.

i. This compact may be terminated only by the affirmative action of the Congress or by the rescission of all laws enacting the compact in each party state.

ARTICLE VIII. PENALTIES

a. Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provision of this compact.

b. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

ARTICLE IX. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstances shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.

§ 10.1-1501. Commissioners and alternates.

The Governor shall appoint two Commissioners and two alternates pursuant to Article IV, paragraph a. of the Compact, subject to confirmation by the General Assembly, to serve at his pleasure. The appointees shall be individuals qualified and experienced in the field of low-level radioactive waste generation, treatment, storage, transportation and disposal.

§ 10.1-1502. Expenses of Commissioners and alternates.

The Commissioners and alternates shall be reimbursed out of moneys appropriated for such purposes all sums which they necessarily expend in the discharge of their duties as members of the Southeast Interstate Low-Level Radioactive Waste Commission.

§ 10.1-1503. Cooperation of state and local agencies.

All agencies, departments and officers of the Commonwealth and its political subdivisions are hereby authorized and directed to cooperate with the Commission in the furtherance of activities pursuant to the Compact.

§ 10.1-1504. Board to enforce Compact; penalty.

The Virginia Waste Management Board is authorized to enforce the provisions of this chapter. Any person not an official of another party state to the Compact who violates

any provision of this chapter shall be subject to a civil penalty of not more than $25,000 per day for each violation.

§ 10.1-2500. Virginia Environmental Emergency Response Fund established.

A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter referred to as the Fund, to be used (i) for the purpose of emergency response to environmental pollution incidents and for the development and implementation of corrective actions for pollution incidents, other than pollution incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as described in § 62.1-44.34:11 of the State Water Control Law, (ii) to conduct assessments of potential sources of toxic contamination in accordance with the policy developed pursuant to § 62.1-44.19:10, and (iii) to assist small businesses for the purposes described in § 10.1-1197.3.

B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to subsection B of § 10.1-1316 and civil charges assessed pursuant to subsection C of § 10.1-1316.

2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed pursuant to subsections A and E of § 10.1-1455 and civil charges assessed pursuant to subsection F of § 10.1-1455.

3. Civil charges assessed pursuant to subdivision 8d of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.), Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

4. Civil penalties and civil charges assessed pursuant to § 62.1-270.

5. Civil penalties assessed pursuant to subsection A of § 62.1-252 and civil charges assessed pursuant to subsection B of § 62.1-252.

6. Civil penalties assessed in conjunction with special orders by the Director pursuant to § 10.1-1186 and by the Waste Management Board pursuant to subsection G of § 10.1-1455.

§ 10.1-2501. Administration of the Fund.

All moneys received by the State Treasurer for the civil penalties and civil charges referred to in § 10.1-2500, and all reimbursements received under § 10.1-2502 shall be and hereby are credited to the Fund. Interest earned on the Fund shall be credited to the

Fund. The Fund shall be established on the books of the State Comptroller. Any moneys remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund.

§ 10.1-2502. Disbursements from the Fund; transfer of funds to the Small Business Environmental Compliance Assistance Fund.

The disbursement of moneys from the Fund shall be made by the State Comptroller at the written request of the Director of the Department of Environmental Quality. The Director shall have the authority to access the Fund for up to $100,000 per occurrence as long as the disbursement does not exceed the balance for the agency account. If the Director requests a disbursement in excess of $100,000 or an amount exceeding the remaining agency balance, the disbursement shall require the written approval of the Governor. The Department of Environmental Quality shall develop guidelines which, after approval by the Governor, determine how the Fund can be used for the purposes described herein.

Disbursements from the Fund may be made for the purposes outlined in § 10.1-2500, including, but not limited to, personnel, administrative, and equipment costs and expenses directly incurred by the above-mentioned agencies or by any other agency or political subdivision, acting at the direction of one of the above-mentioned agencies, in and for preventing or alleviating damage, loss, hardship, or suffering caused by environmental pollution incidents.

The agency shall promptly seek reimbursement from any person causing or contributing to an environmental pollution incident for all sums disbursed from the Fund for the protection, relief and recovery from loss or damage caused by such person. In the event a request for reimbursement is not paid within sixty days of receipt of a written demand, the claim shall be referred to the Attorney General for collection. The agency shall be allowed to recover all legal and court costs and other expenses incident to such actions for collection.

In any year in which the Fund balance exceeds two million dollars, the Director may transfer such excess amount to the Small Business Environmental Compliance Assistance Fund established pursuant to § 10.1-1197.2.