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HOUSE BILL NO. 387

Offered January 9, 2002

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A BILL to amend and reenact §§ 10.1-1307, 10.1-1308, 10.1-1402, 10.1-1408.1 and 62.1-44.15 of the Code of Virginia, relating to achieving the standards established by environmental regulations.

Patron—Wardrup

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1307, 10.1-1308, 10.1-1402, 10.1-1408.1 and 62.1-44.15 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1307. Further powers and duties of Board.

A. The Board shall have the power to control and regulate its internal affairs; initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2. *Beginning July 1, 2002, no such air emissions standard shall be adopted by regulation unless the Board makes a written certification that sufficient scientific or technological evidence exists that the standard can be met, provided that this requirement shall not apply to any standard specifically mandated under federal law. The certification shall be published by the Registrar of Regulations with the proposed regulation at the time that the Registrar publishes the proposed regulation pursuant to § 2.2-4007. In addition, for purposes of determining whether such emissions standards are appropriate, the Board, in adopting such standards, shall give due consideration to the economic impact analysis prepared pursuant to § 2.2-4007.*

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, it may in its discretion grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant. If local variances are permitted, the Board shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Board after a hearing determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least thirty days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, it shall have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce its regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of its orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. The Board may designate one of its members, the Director, or a staff assistant to conduct the hearings provided for in this chapter. A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.

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59 G. The Board shall submit an annual report to the Governor and General Assembly on or before
60 October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on
61 the status of the Commonwealth's air quality. The annual report shall be distributed in accordance with
62 the provisions of § 2.2-1127.

63 § 10.1-1308. Regulations.

64 A. The Board, after having studied air pollution in the various areas of the Commonwealth, its
65 causes, prevention, control and abatement, shall have the power to promulgate regulations, including
66 emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the
67 Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.),
68 except that a description of provisions of any proposed regulation which are more restrictive than
69 applicable federal requirements, together with the reason why the more restrictive provisions are needed,
70 shall be provided to the standing committee of each house of the General Assembly to which matters
71 relating to the content of the regulation are most properly referable. *Beginning July 1, 2002, no air*
72 *emissions standard relating to air pollution shall be adopted by regulation unless the Board makes a*
73 *written certification that sufficient scientific or technological evidence exists that the standard can be*
74 *met, provided that this requirement shall not apply to any standard specifically mandated under federal*
75 *law. The certification shall be published by the Registrar of Regulations with the proposed regulation at*
76 *the time that the Registrar publishes the proposed regulation pursuant to § 2.2-4007. In addition, for*
77 *purposes of determining whether such emissions standards are appropriate, the Board, in adopting such*
78 *standards, shall give due consideration to the economic impact analysis prepared pursuant to*
79 *§ 2.2-4007. No such regulation, shall prohibit the burning of leaves from trees by persons on property*
80 *where they reside if the local governing body of the county, city or town has enacted an otherwise valid*
81 *ordinance regulating such burning. The regulations shall not promote or encourage any substantial*
82 *degradation of present air quality in any air basin or region which has an air quality superior to that*
83 *stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all*
84 *of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).*

85 B. Any regulation requiring the use of stage 1 vapor recovery equipment shall require the use of
86 such equipment only in areas that have been designated at any time by the U.S. Environmental
87 Protection Agency as nonattainment areas for the pollutant ozone.

88 § 10.1-1402. Powers and duties of the Board.

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

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

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

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

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

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

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

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

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

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

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

112 11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions
113 necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except
114 that a description of provisions of any proposed regulation which are more restrictive than applicable
115 federal requirements, together with the reason why the more restrictive provisions are needed, shall be
116 provided to the standing committee of each house of the General Assembly to which matters relating to
117 the content of the regulation are most properly referable. *Beginning July 1, 2002, no solid waste*
118 *standard shall be adopted by regulation pursuant to the authority granted in this section unless the*
119 *Board makes a written certification that sufficient scientific or technological evidence exists that the*
120 *standard can be met, provided that this requirement shall not apply to any standard specifically*

mandated under federal law. The certification shall be published by the Registrar of Regulations with the proposed regulation at the time that the Registrar publishes the proposed regulation pursuant to § 2.2-4007. In addition, for purposes of determining whether such solid waste standards are appropriate, the Board, in adopting such standards, shall give due consideration to the economic impact analysis prepared pursuant to § 2.2-4007.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25, 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.

15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit application 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.

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, permit application 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 issue such permits. 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 which 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.

§ 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

182 located that the location and operation of the facility are consistent with all applicable ordinances. The
183 governing body shall inform the applicant and the Department of the facility's compliance or
184 noncompliance not more than 120 days from receipt of a request from the applicant. No such
185 certification shall be required for the application for the renewal of a permit or transfer of a permit as
186 authorized by regulations of the Board;

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

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

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

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

215 5. If the applicant is a local government or public authority that proposes to operate a new municipal
216 sanitary landfill or transfer station, a statement, including a description of the steps taken by the
217 applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station
218 is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer
219 station. The public comment steps shall be taken prior to filing with the Department the notice of intent
220 to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid
221 waste management regulations. The public comment steps shall include the formation of a citizens'
222 advisory group to assist the locality or public authority with the selection of a proposed site for the
223 sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks
224 in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is
225 proposed to be located, and holding at least one public meeting within the locality to identify issues of
226 concern, to facilitate communication and to establish a dialogue between the applicant and persons who
227 may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice
228 shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary
229 landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time
230 and location of the public meeting the applicant will hold and the name, address and telephone number
231 of a person employed by the applicant, who can be contacted by interested persons to answer questions
232 or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The
233 first publication of the public notice shall be at least fourteen days prior to the public meeting date. For
234 local governments that have zoning ordinances, such public comment steps as required under
235 §§ 15.2-2204 and 15.2-2285 shall satisfy the public comment requirements for public hearings and
236 public notice as required under this section. Any applicant which is a local government or public
237 authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is
238 already located shall be exempt from the public comment requirements for public hearing and public
239 notice otherwise required under this section;

240 6. If the application is for a new municipal solid waste landfill or for an expansion of an existing
241 municipal solid waste landfill, a statement, signed by the applicant, guaranteeing that sufficient disposal
242 capacity will be available in the facility to enable localities within the Commonwealth to comply with
243 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; and

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.

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 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.

305 The Director may include in any permit such recordkeeping, testing and reporting requirements as are
306 necessary to ensure that the local governing body of the county, city or town where the waste
307 management facility is located is kept timely informed regarding the general nature and quantity of
308 waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall
309 require disclosure of proprietary information only as is necessary to carry out the purposes of this
310 chapter. At least once every ten years, the Director shall review and issue written findings on the
311 environmental compliance history of each permittee, material changes, if any, in key personnel, and
312 technical limitations, standards, or regulations on which the original permit was based. The time period
313 for review of each category of permits shall be established by Board regulation. If, upon such review,
314 the Director finds that repeated material or substantial violations of the permittee or material changes in
315 the permittee's key personnel would make continued operation of the facility not in the best interests of
316 human health or the environment, the Director shall amend or revoke the permit, in accordance
317 herewith. Whenever such review is undertaken, the Director may amend the permit to include additional
318 limitations, standards, or conditions when the technical limitations, standards, or regulations on which
319 the original permit was based have been changed by statute or amended by regulation or when any of
320 the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any
321 permit for any of the grounds listed under subsection A of § 10.1-1409.

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

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

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

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

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

339 J. No permit shall be required pursuant to this section for recycling or for temporary storage
340 incidental to recycling. As used in this subsection, "recycling" means any process whereby material
341 which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in
342 an industrial process to make a product, or as an effective substitute for a commercial product.

343 K. The Board shall provide for reasonable exemptions from the permitting requirements, both
344 procedural and substantive, in order to encourage the development of yard waste composting facilities.
345 To accomplish this, the Board is authorized to exempt such facilities from regulations governing the
346 treatment of waste and to establish an expedited approval process. Agricultural operations receiving only
347 yard waste for composting shall be exempt from permitting requirements provided that (i) the
348 composting area is located not less than 300 feet from a property boundary, is located not less than
349 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is
350 not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural
351 operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of
352 finished compost generated; (iii) the total time for the composting process and storage of material that is
353 being composted or has been composted shall not exceed eighteen months prior to its field application
354 or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural
355 operation notifies the Director in writing of his intent to operate a yard waste composting facility and
356 the amount of land available for the receipt of yard waste. In addition to the requirements set forth in
357 clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation
358 that receives more than 6,000 cubic yards of yard waste generated from property not within the control
359 of the owner or the operator in any twelve-month period shall be exempt from permitting requirements
360 provided (ia) the owner and operator submit to the Director an annual report describing the volume and
361 types of yard waste received by such operation for composting and (ib) the operator shall certify that
362 the yard waste composting facility complies with local ordinances. The Director shall establish a
363 procedure for the filing of the notices, annual reports and certificates required by this subsection and
364 shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall
365 prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any
366 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. *Beginning July 1, 2002, no standard for the operation of a solid waste management facility shall be adopted by regulation pursuant to the authority granted in this section unless the Board makes a written certification that sufficient scientific or technological evidence exists that the standard can be met, provided that this requirement shall not apply to any standard specifically mandated under federal law. The certification shall be published by the Registrar of Regulations with the proposed regulation at the time that the Registrar publishes the proposed regulation pursuant to § 2.2-4007. In addition, for purposes of determining whether such standards are appropriate, the Board, in adopting such standards, shall give due consideration to the economic impact analysis prepared pursuant to § 2.2-4007.* 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

428 Director, would pose a substantial risk to health or the environment. Facilities described in category 3
429 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that
430 there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable
431 performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of
432 the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

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

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

446 Nothing in this subsection shall alter any requirement for groundwater monitoring, financial
447 responsibility, operator certification, closure, postclosure care, operation, maintenance or corrective action
448 imposed under state or federal law or regulation, or impair the powers of the Director pursuant to
449 § 10.1-1409.

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

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

462 Q. No owner or operator of a municipal solid waste management facility shall accept wastes for
463 incineration or disposal from a vehicle operating with four or more axles unless the transporter of the
464 waste provides certification, in a form prescribed by the Board, that the waste is free of substances not
465 authorized for acceptance at the facility.

466 § 62.1-44.15. Powers and duties.

467 It shall be the duty of the Board and it shall have the authority:

468 (1) [Repealed.]

469 (2) To study and investigate all problems concerned with the quality of state waters and to make
470 reports and recommendations.

471 (2a) To study and investigate methods, procedures, devices, appliances, and technologies which could
472 assist in water conservation or water consumption reduction.

473 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or
474 without the Commonwealth.

475 (2c) To make reports concerning, and formulate recommendations based upon, any such water
476 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth
477 are met.

478 (3a) To establish such standards of quality and policies for any state waters consistent with the
479 general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies
480 established and to take all appropriate steps to prevent quality alteration contrary to the public interest or
481 to standards or policies thus established, except that a description of provisions of any proposed standard
482 or policy adopted by regulation which are more restrictive than applicable federal requirements, together
483 with the reason why the more restrictive provisions are needed, shall be provided to the standing
484 committee of each house of the General Assembly to which matters relating to the content of the
485 standard or policy are most properly referable. *Beginning July 1, 2002, no such water quality standard
486 or policy shall be adopted by regulation pursuant to the authority granted in this section unless the
487 Board makes a written certification that sufficient scientific or technological evidence exists that the
488 standard or policy can be met, provided that this requirement shall not apply to any standard or policy
489 specifically mandated under federal law. The certification shall be published by the Registrar of*

Regulations with the proposed regulation at the time that the Registrar publishes the proposed regulation pursuant to § 2.2-4007. In addition, for purposes of determining whether such standards or policies are appropriate, the Board, in adopting such standards or policies, shall give due consideration to the economic impact analysis prepared pursuant to § 2.2-4007. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to subsection B of § 2.2-4007 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000 et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the Commonwealth any moneys which any such agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

(5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed fifteen years. The term of a Virginia Pollution Abatement permit shall not exceed ten years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be ten years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued at least once every five years, except that the Department shall inspect all facilities covered by the Virginia Pollution Abatement permit for confined animal feeding operations annually. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification beyond the maximum duration and the certificate shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The owner has violated any regulation or order of the Board, any condition of a certificate, 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 substantial 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 Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a certificate, or in any other report or document required under this law or under the regulations of the Board;

3. The activity for which the certificate was issued endangers human health or the environment and

551 can be regulated to acceptable levels by amendment or revocation of the certificate; or

552 4. There exists a material change in the basis on which the permit was issued that requires either a
553 temporary or a permanent reduction or elimination of any discharge controlled by the certificate
554 necessary to protect human health or the environment.

555 (6) To make investigations and inspections, to ensure compliance with any certificates, standards,
556 policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to
557 furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In
558 recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into
559 a memorandum of understanding establishing a common format to consolidate and simplify inspections
560 of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall
561 ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water
562 quality and public health and at the same time avoid any unnecessary administrative burden on those
563 being inspected.

564 (7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing
565 of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to
566 procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this
567 section shall be by such means as the Board may prescribe.

568 (8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by
569 § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct
570 facilities in accordance with final approved plans and specifications to construct such facilities in
571 accordance with final approved plans and specifications, (iii) who have violated the terms and provisions
572 of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to
573 comply with a directive from the Board to comply with such directive, (v) who have contravened duly
574 adopted and promulgated water quality standards and policies to cease and desist from such
575 contravention and to comply with such water quality standards and policies, (vi) who have violated the
576 terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned
577 treatment works to comply with such terms and provisions or (vii) who have contravened any applicable
578 pretreatment standard or requirement to comply with such standard or requirement; and also to issue
579 such orders to require any owner to comply with the provisions of this chapter and any decision of the
580 Board.

581 (8b) Such special orders are to be issued only after a hearing with at least thirty days' notice to the
582 affected owners, of the time, place and purpose thereof, and they shall become effective not less than
583 fifteen days after service as provided in § 62.1-44.12; provided that if the Board finds that any such
584 owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety
585 or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational,
586 commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or
587 hearing, an emergency special order directing the owner to cease such pollution or discharge
588 immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and
589 place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an
590 owner who has been issued such a special order or an emergency special order is not complying with
591 the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based
592 on a finding of an imminent and substantial danger, the court shall issue an injunction compelling
593 compliance with the emergency special order pending a hearing by the Board. If an emergency special
594 order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within
595 forty-eight hours of the issuance of the injunction.

596 (8c) The provisions of this section notwithstanding, the Board may proceed directly under
597 § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly
598 promulgated hereunder.

599 (8d) With the consent of any owner who has violated or failed, neglected or refused to obey any
600 regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board
601 may provide, in an order issued by the Board against such person, for the payment of civil charges for
602 past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges
603 shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and
604 shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state
605 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response
606 Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding civil charges assessed for
607 violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of this title,
608 or a regulation, administrative or judicial order, or term or condition of approval relating to or issued
609 under those articles.

610 The amendments to this section adopted by the 1976 Session of the General Assembly shall not be
611 construed as limiting or expanding any cause of action or any other remedy possessed by the Board
612 prior to the effective date of said amendments.

(9) To make such rulings under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, 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.

(11) To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any circuit court within the territory embraced by such political subdivision. If the owner is an establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in which such establishment is located. If the owner is an individual or group of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in which such person or any of them reside.

(c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though the State Water Control Board were the owner of the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as a defense in bar to any such action.

(d) The proceeds of any recovery had under this subsection shall, when received by the Board, be applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries' management practices as in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any such funds received are hereby appropriated for that purpose.

(e) Nothing in this subsection shall be construed in any way to limit or prevent any other action which is now authorized by law by the Board against any owner.

(f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who adds or applies any chemicals or other substances that are recommended or approved by the State Department of Health to state waters in the course of processing or treating such waters for public water supply purposes, except where negligence is shown.

(12) To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in this Commonwealth.

(13) To establish policies and programs for effective area-wide or basin-wide water quality control and management. The Board may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water quality management and pollution control plan in the watershed or basin as a whole. In making such determinations, the Board is to seek the advice of local, regional, or state planning authorities.

(14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes of this chapter.

(15) To promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into waters of the state. The requirements shall address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use. The requirements shall be developed in consultation with the Department of Health and other appropriate state agencies. This authority shall not be construed

674 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

675 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's
676 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland
677 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net
678 resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and
679 guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

680 **2. That the provisions of this act shall not apply to any proposed regulation filed with the**
681 **Registrar of Regulations prior to July 1, 2002, provided that the information required to be**
682 **published for such regulation pursuant to subsection H of § 2.2-4007 has been published in the**
683 **Virginia Register of Regulations prior to such date.**