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HOUSE BILL NO. 2026

Offered January 13, 1997

A BILL to amend and reenact §§ 2.1-1.5, 2.1-504.2, 2.1-505.3, 9-6.14:4.1, 10.1-1400, 10.1-1402, 10.1-1405, 10.1-1429.1, 10.1-1429.2, 10.1-1429.3, 10.1-1455, 10.1-1456, 10.1-2500, 10.1-2501, 55-171, and 55-182.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 10.1-1402.02 and 10.1-1404.1; in Chapter 14 of Title 10.1 an article numbered 9, consisting of sections numbered 10.1-1458 through 10.1-1484; in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.6; in Chapter 32 of Title 58.1 an article numbered 4.2, consisting of sections numbered 58.1-3245.6 through 58.1-3245.11; and a section numbered 58.1-3660.2, relating to the administration and remediation of abandoned waste sites; establishment of the Abandoned Waste Site Remediation Foundation; and creation of the Abandoned Waste Site Remediation Fund; civil penalties.

Patrons—Deeds, Melvin and Plum; Senators: Marye and Trumbo

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.5, 2.1-504.2, 2.1-505.3, 9-6.14:4.1, 10.1-1400, 10.1-1402, 10.1-1405, 10.1-1429.1, 10.1-1429.2, 10.1-1429.3, 10.1-1455, 10.1-1456, 10.1-2500, 10.1-2501, 55-171, and 55-182.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 10.1-1402.02 and 10.1-1404.1; in Chapter 14 of Title 10.1 an article numbered 9, consisting of sections numbered 10.1-1458 through 10.1-1484; in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.6; in Chapter 32 of Title 58.1 an article numbered 4.2, consisting of sections numbered 58.1-3245.6 through 58.1-3245.11; and a section numbered 58.1-3660.2 as follows:

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or the enabling legislation of the entities:

Authorities

Assistive Technology Loan Fund Authority.
 Medical College of Virginia Hospitals Authority.
 Richmond Eye and Ear Hospital Authority.
 Small Business Financing Authority.
 State Education Assistance Authority.
 Virginia Agriculture Development Authority.
 Virginia College Building Authority.
 Virginia Economic Development Partnership.
 Virginia Education Loan Authority.
 Virginia Housing Development Authority.
 Virginia Information Providers Network Authority.
 Virginia Innovative Technology Authority.
 Virginia Port Authority.
 Virginia Public Building Authority.
 Virginia Public School Authority.
 Virginia Resources Authority.
 Virginia Student Assistance Authorities.

Boards

Board of Commissioners, Virginia Agriculture Development Authority.
 Board of Commissioners, Virginia Port Authority.
 Board of Directors, Assistive Technology Loan Fund Authority.
 Board of Directors, Medical College of Virginia Hospitals Authority.
 Board of Directors, Richmond Eye and Ear Hospital Authority.
 Board of Directors, Small Business Financing Authority.
 Board of Directors, Virginia Economic Development Partnership.
 Board of Directors, Virginia Student Assistance Authorities.
 Board of Directors, Virginia Innovative Technology Authority.
 Board of Directors, Virginia Resources Authority.
 Board of Regents, Gunston Hall Plantation.

- 60 Board of Regents, James Monroe Memorial Law Office and Library.
- 61 Board of Trustees, Family and Children's Trust Fund.
- 62 Board of Trustees, Frontier Culture Museum of Virginia.
- 63 Board of Trustees, Jamestown-Yorktown Foundation.
- 64 Board of Trustees, Miller School of Albemarle.
- 65 Board of Trustees, Rural Virginia Development Foundation.
- 66 Board of Trustees, The Science Museum of Virginia.
- 67 Board of Trustees, Virginia Museum of Fine Arts.
- 68 Board of Trustees, Virginia Museum of Natural History.
- 69 Board of Trustees, Virginia Outdoor Foundation.
- 70 Board of the Virginia Higher Education Tuition Trust Fund.
- 71 Board of Visitors, Christopher Newport University.
- 72 Board of Visitors, The College of William and Mary in Virginia.
- 73 Board of Visitors, George Mason University.
- 74 Board of Visitors, Gunston Hall Plantation.
- 75 Board of Visitors, James Madison University.
- 76 Board of Visitors, Longwood College.
- 77 Board of Visitors, Mary Washington College.
- 78 Board of Visitors to Mount Vernon.
- 79 Board of Visitors, Norfolk State University.
- 80 Board of Visitors, Old Dominion University.
- 81 Board of Visitors, Radford University.
- 82 Board of Visitors, University of Virginia.
- 83 Board of Visitors, Virginia Commonwealth University.
- 84 Board of Visitors, Virginia Military Institute.
- 85 Board of Visitors, Virginia Polytechnic Institute and State University.
- 86 Board of Visitors, Virginia State University.
- 87 Governing Board, Virginia College Building Authority.
- 88 Governing Board, Virginia Public School Authority.
- 89 Library Board, The Library of Virginia.
- 90 Motor Vehicle Dealer Board.
- 91 State Board for Community Colleges, Virginia Community College System.
- 92 Virginia-Israel Advisory Board.
- 93 Center
- 94 A.L. Philpott Manufacturing Research Center.
- 95 Commissions
- 96 Alexandria Historical Restoration and Preservation Commission.
- 97 Charitable Gaming Commission.
- 98 Chesapeake Bay Bridge and Tunnel Commission.
- 99 Hampton Roads Sanitation District Commission.
- 100 Districts
- 101 Chesapeake Bay Bridge and Tunnel District.
- 102 Hampton Roads Sanitation District.
- 103 Educational Institutions
- 104 Christopher Newport University.
- 105 College of William and Mary in Virginia.
- 106 Frontier Culture Museum of Virginia.
- 107 George Mason University.
- 108 James Madison University.
- 109 Jamestown-Yorktown Foundation.
- 110 Longwood College.
- 111 Mary Washington College.
- 112 Miller School of Albemarle.
- 113 Norfolk State University.
- 114 Old Dominion University.
- 115 Radford University.
- 116 The Science Museum of Virginia.
- 117 University of Virginia.
- 118 Virginia Commonwealth University.
- 119 Virginia Community College System.
- 120 Virginia Military Institute.
- 121 Virginia Museum of Fine Arts.

Virginia Polytechnic Institute and State University.
The Library of Virginia.
Virginia State University.

Foundations

Abandoned Waste Site Remediation Foundation.
Chippokes Plantation Farm Foundation.
Rural Virginia Development Foundation.
Virginia Conservation and Recreation Foundation.
Virginia Historic Preservation Foundation.
Virginia Outdoor Foundation.

Museum

Virginia Museum of Natural History.

Plantation

Gunston Hall Plantation.

System

Virginia Retirement System.

§ 2.1-504.2. Department to review proposed acquisitions of real property; approval by the Governor; exceptions.

Notwithstanding any provision of law to the contrary, no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means whatsoever without following guidelines promulgated by the Department of General Services and obtaining the prior approval of the Governor. The Department of General Services shall review every proposed acquisition of real property by gift, lease, purchase or any other means whatsoever by any department, agency or institution of the Commonwealth and recommend either approval or disapproval of such transactions to the Governor based on cost, demonstrated need, and compliance with the aforesaid guidelines. The provisions of this section shall not apply to the acquisition of real property for open space preservations pursuant to the purposes of § 10.1-1800 and subdivision A 4 of § 10.1-2204, if it does not require as a condition of acceptance, an appropriation of any state funds for the continued maintenance of such property, for the acquisition through the temporary lease or donation of real property for a period of six months or less duration, or for the construction, improvement or maintenance of highways and transportation facilities and purposes incidental thereto by the Department of Transportation; however, acquisitions of real property by the Department of Transportation for office space, district offices, residencies, area headquarters, and correctional facilities shall be subject to such review and approval. *The provisions of this section shall not apply to the acquisition by the Abandoned Waste Site Remediation Foundation of property designated as an abandoned waste site pursuant to § 10.1-1402.02.*

§ 2.1-504.3. Conveyance and transfers of real property by state agencies.

A. When it is deemed to be in the public interest, property owned by the Commonwealth may be sold, leased or other interests therein conveyed to political subdivisions, public authorities, or the federal government, for such consideration as is deemed proper, upon the written approval of the Governor, who shall have first considered the written recommendations of the Director of the Department of General Services. The Attorney General shall approve the form of the instruments prior to execution.

B. When it is found to be in the public interest, property owned by the Commonwealth and held in the possession of a department, agency or institution of the Commonwealth may be transferred to the possession of another department, agency or institution of the Commonwealth by the execution of an agreement between the heads of such departments, agencies or institutions, upon the written approval of the Governor, who shall have first considered the written recommendations of the Director of the Department of General Services. The Attorney General shall approve the form of the instruments prior to execution.

C. *Property acquired by the Commonwealth by escheat which has been designated by the Waste Management Board as an abandoned waste site pursuant to § 10.1-1402.02 may be transferred to the Abandoned Waste Site Remediation Foundation by the execution of an agreement between the head of the department having possession of such escheated property and the Board of Trustees of the Foundation, upon the written approval of the Governor, who shall have first considered the written recommendations of the Director of the Department of General Services. The Attorney General shall approve the form of the instruments prior to execution.*

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly

183 granted any of the powers of a court of record.

184 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the
185 management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2
186 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7
187 (§ 29.1-700 et seq.) of Title 29.1.

188 4. The Virginia Housing Development Authority.

189 5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created
190 under this Code, including those with federal authorities.

191 6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22,
192 such educational institutions shall be exempt from the publication requirements only with respect to
193 regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and
194 disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and
195 disciplining of students.

196 7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii)
197 classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for
198 producers' milk, time and method of payment, butterfat testing and differential.

199 8. The Virginia Resources Authority.

200 9. Agencies expressly exempted by any other provision of this Code.

201 10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments
202 to the Formulary pursuant to § 32.1-81.

203 11. The Council on Information Management.

204 12. The Department of General Services in promulgating standards for the inspection of buildings for
205 asbestos pursuant to § 2.1-526.14.

206 13, 14. [Repealed.]

207 15. The State Council of Higher Education for Virginia, in developing, issuing, and revising
208 guidelines pursuant to § 23-9.6:2.

209 16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to
210 subsection B of § 3.1-726.

211 17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and
212 Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4,
213 subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and
214 subsection A of § 3.1-884.21:1.

215 18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines,
216 and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of
217 optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

218 19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating
219 amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

220 20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner
221 Formulary established pursuant to § 54.1-2957.01.

222 21. The Virginia War Memorial Foundation.

223 22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to
224 the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage
225 pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

226 23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to
227 § 22.1-280.3.

228 24. The Virginia Student Assistance Authorities.

229 25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in
230 matters related to any specific race meeting.

231 26. The Virginia Small Business Financing Authority.

232 27. The Virginia Economic Development Partnership Authority.

233 28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations
234 pursuant to clause A (ii) of § 59.1-156.

235 B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

236 1. Money or damage claims against the Commonwealth or agencies thereof.

237 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

238 3. The location, design, specifications or construction of public buildings or other facilities.

239 4. Grants of state or federal funds or property.

240 5. The chartering of corporations.

241 6. Customary military, naval or police functions.

242 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
243 the Commonwealth.

244 8. The conduct of elections or eligibility to vote.

- 245 9. Inmates of prisons or other such facilities or parolees therefrom.
- 246 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
- 247 well as the treatment, supervision, or discharge of such persons.
- 248 11. Traffic signs, markers or control devices.
- 249 12. Instructions for application or renewal of a license, certificate, or registration required by law.
- 250 13. Content of, or rules for the conduct of, any examination required by law.
- 251 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter
- 252 14 of Title 2.1.
- 253 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
- 254 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
- 255 published and posted.
- 256 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
- 257 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.
- 258 17. Any operating procedures for review of child deaths developed by the State Child Fatality
- 259 Review Team pursuant to § 32.1-283.1.
- 260 18. *The adoption and revision of priority lists for abandoned waste sites and the adoption and*
- 261 *revision of a remediation plan for any abandoned waste site pursuant to Article 9 (§ 10.1-1458 et seq.)*
- 262 *of Title 10.1.*
- 263 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
- 264 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:
- 265 1. Agency orders or regulations fixing rates or prices.
- 266 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
- 267 including delegations of authority.
- 268 3. Regulations which consist only of changes in style or form or corrections of technical errors. Each
- 269 promulgating agency shall review all references to sections of the Code of Virginia within their
- 270 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
- 271 ensure the accuracy of each section or section subdivision identification listed.
- 272 4. Regulations which:
- 273 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
- 274 agency discretion is involved;
- 275 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
- 276 discretion is involved; or
- 277 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
- 278 do not differ materially from those required by federal law or regulation, and the Registrar has so
- 279 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
- 280 determination shall be published in the Virginia Register not less than thirty days prior to the effective
- 281 date thereof.
- 282 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
- 283 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
- 284 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
- 285 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of
- 286 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not
- 287 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in
- 288 writing the nature of the emergency and of the necessity for such action and may adopt such
- 289 regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the
- 290 Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than
- 291 twelve months in duration. During the twelve-month period, an agency may issue additional emergency
- 292 regulations as needed addressing the subject matter of the initial emergency regulation, but any such
- 293 additional emergency regulations shall not be effective beyond the twelve-month period from the
- 294 effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject
- 295 matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace
- 296 the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this
- 297 chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be
- 298 published within sixty days of the effective date of the emergency regulation, and the proposed
- 299 replacement regulation shall be published within 180 days after the effective date of the emergency
- 300 regulation.
- 301 6. [Repealed.]
- 302 7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to
- 303 subsection C of § 10.1-1322.2.
- 304 8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or
- 305 clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board

meetings and one public hearing.

9. Regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

10. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to § 45.1-161.82.

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.), of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 28.2 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

G. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

I. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

§ 10.1-1400. Definitions.

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

"Abandoned waste site" means any site where solid waste or other substance within the jurisdiction of the Board has been improperly managed and has not been closed in accordance with this chapter, and where the (i) title to the site has been acquired by the Commonwealth by escheat; (ii) owner of the site is an entity whose existence has terminated and dissolved, and no successor exists or can be determined; (iii) identity of the owner of the site cannot be determined; or (iv) site is not occupied or

regularly operated, and the owner lacks sufficient resources to pay for the remediation of the site and, if a party other than the owner is responsible for the improper management of such substance upon the site, the responsible party cannot be determined, has terminated and dissolved and no successor thereto exists or can be determined, or lacks sufficient resources to pay for the remediation of the site. An abandoned waste site shall include any lands adjacent to such site and owned by the owner of the site, which are necessary and appropriate to be used for the management of such site or necessary or suitable for restricted access. The following sites shall not constitute abandoned waste sites: (i) coal refuse piles regulated pursuant to Title 45.1 or abandoned mine lands existing at the time of enactment of the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, 91 U.S. Stat. 445); (ii) property owned or operated by the Commonwealth except sites upon which solid waste or other substance within the jurisdiction of the Board was improperly managed prior to the Commonwealth's acquisition of such site by escheat; (iii) property owned or operated by any political subdivision of the Commonwealth; (iv) property included on the National Priority List under the jurisdiction of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.); or (v) property for which remediation is required by the Board, a court of proper jurisdiction, or the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

"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 Waste Management.

"Director" means the Director of the Department of Waste Management.

"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 ten 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 ten 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 ten 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 ten 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.

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

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

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

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

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

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

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

443 "Household hazardous waste" means any waste material derived from households (including single
444 and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic
445 grounds and day-use recreation areas) which, except for the fact that it is derived from a household,
446 would be classified as a hazardous waste.

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

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

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

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

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

472 "Radioactive waste" or "nuclear waste" includes:

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

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

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

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

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

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

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

489 "Resource conservation" means reduction of the amounts of solid waste that are generated, reduction
490 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.

§ 10.1-1402. 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 which 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 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, *including any site designated by the Board as an abandoned waste site pursuant to § 10.1-1402.02*, 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; *however, if the Board has designated a site as an abandoned waste site, funds received in connection with the site shall, subject to requirements of federal law, be deposited in the Abandoned Waste Site Remediation Fund pursuant to § 10.1-1463.*

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. *Take such actions to contain or clean up sites or issue such orders to require cleanup of sites designated as an abandoned waste site pursuant to § 10.1-1402.02, if requested to do so in connection with the implementation of a remediation plan adopted pursuant to § 10.1-1467.*

§ 10.1-1402.02. Designation of site as an abandoned waste site.

A. The Board, upon receipt of a request from the Department pursuant to § 10.1-1404.1 to determine if a site may constitute an abandoned waste site, shall conduct an informal fact-finding proceeding pursuant to § 9-6.14:11 to determine whether the site constitutes an abandoned waste site. Any such proceeding shall be conducted only after the Board has given at least thirty days notice to all known

owners and operators of the site of the time, place, and purpose thereof. Such notice shall be mailed to each owner and operator of the site by certified mail at its last known address. If the owner or operator of the site no longer exists or cannot be determined, notice of the proceeding shall be served upon the Secretary of the Commonwealth pursuant to § 8.01-329.

B. If the Board determines that the site constitutes an abandoned waste site, it shall issue an order designating the site an abandoned waste site. The order shall identify the owner and operator of the site, if known. If the owner or operator of the site no longer exists or cannot be determined, the order shall so state. Any such order shall become effective not less than fifteen days after mailing a copy thereof by certified mail to the owner or operator at its last known address. If the owner or operator of the site no longer exists or cannot be determined, a copy of the order shall be served upon the Secretary of the Commonwealth pursuant to § 8.01-329. Copies of the order shall also be sent by certified mail to the Abandoned Waste Site Remediation Foundation and the governing body of the county, city or town in which the abandoned waste site is located.

C. Any decision of the Board pursuant to this section shall be appealable as provided in Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

D. The Board may conduct discovery proceedings pursuant to § 10.1-1476 in order to ascertain the assets, financial and otherwise, of an owner or operator available for the remediation of a site.

§ 10.1-1404.1. Identification of possible abandoned waste sites; request to Board.

A. The Department shall maintain an inventory of sites upon which solid waste and other substances within the jurisdiction of the Board have been improperly managed, and shall keep a record of the Department's actions with respect to such sites.

B. If the Department determines that a site may constitute an abandoned waste site, it is authorized to request the Board to determine whether such site constitutes an abandoned waste site. However, prior to making such request, if the owner or operator of the site is known the Department shall notify such owner or operator, or both, by certified mail at its last known address, of the Department's intent, after thirty days, to request the Board to determine whether the site constitutes an abandoned waste site pursuant to § 10.1-1402.02. If the improper management of the solid waste or other substance has not been cured within thirty days following delivery of the notice, the Department may request the Board to determine whether the site constitutes an abandoned waste 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.

E. The Director shall serve as executive secretary of the Abandoned Waste Site Remediation Foundation and is authorized to perform all duties imposed on him pursuant to Article 9 (§ 10.1-1458 et seq.) of this chapter.

§ 10.1-1429.1. Regulation of voluntary remediation; cleanup standards; permit requirements; registration fees.

A. The Board shall promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes or petroleum. The regulations shall apply where remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The regulations shall not apply to property designated as an abandoned waste site pursuant to § 10.1-1404.02; however, the regulations shall apply to an abandoned waste site for which the owner of the property or another person has entered into a cooperative agreement providing for the voluntary remediation of the property as provided by

§ 10.1-1468, and the owner or other person is in compliance with the terms of the cooperative agreement. The regulations shall provide for the following:

1. The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal standards for soil, groundwater and sediments, taking into consideration scientific information regarding the following: (i) protection of public health and the environment; (ii) ~~the~~ future industrial, commercial, residential, or other use of the property to be remediated and of surrounding properties; (iii) reasonably available and effective remediation technology and analytical quantitation technology; (iv) ~~the~~ availability of institutional or engineering controls that are protective of human health or the environment; and (v) natural background levels for hazardous constituents;

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

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

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

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

B. The Board shall promulgate the regulations required under subsection A to be in effect by July 1, 1997. Prior to the promulgation of those regulations, the Board, through the Director, shall administer a voluntary remediation program on a case-by-case basis consistent with the criteria set out in subsection A, including, but not limited to, the collection of registration fees. Persons conducting voluntary remediation pursuant to an agreement with the Department entered into prior to the promulgation of those regulations may elect to complete the cleanup in accordance with such an agreement or the regulations.

§ 10.1-1429.2. Immunity.

Certification of satisfactory completion of remediation, *including remediation completed pursuant to a cooperative agreement as provided by § 10.1-1468*, shall constitute immunity to an enforcement action under this chapter, the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 13 (§ 10.1-1300 et seq.) of this title, or other applicable law.

§ 10.1-1429.3. Site access.

At the request of a person who owns, operates, holds a security interest in or contracts for the purchase of property from which the contamination to be voluntarily remediated originates, *or has agreed to remediate the property pursuant to a cooperative agreement as provided by § 10.1-1468*, the Department is authorized to seek temporary access to private and public property not owned by such person conducting the voluntary remediation as may be reasonably necessary for such person to conduct the voluntary remediation. Such request shall include a demonstration that the person requesting access has used reasonable effort to obtain access by agreement with the property owner. Such access, if granted, shall be granted for only the minimum amount of time necessary to complete the remediation and shall be exercised in a manner that minimizes the disruption of ongoing activities and compensates for actual damages. The person requesting access shall reimburse the Commonwealth for reasonable, actual and necessary expenses incurred in seeking or obtaining access. Denial of access to the Department by a property owner creates a rebuttable presumption that such owner waives all rights, claims and causes of action against the person volunteering to perform remediation for costs, losses or damages related to the contamination as to claims for costs, losses or damages arising after the date of such denial of access to the Department. A property owner who has denied access to the Department may rebut the presumption by showing that he had good cause for the denial or that the person requesting that the Department obtain access acted in bad faith.

§ 10.1-1455. 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 \$25,000 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; *however, any civil penalties assessed with respect to property designated as an abandoned waste site pursuant to § 10.1-1402.02 shall be deposited into the Abandoned Waste Site Remediation Fund pursuant to § 10.1-1463.*

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 \$25,000 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 H.

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 § 9-6.14:4, of the Board or Director. Any such order shall be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than fifteen 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 or § 10.1-1470 shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 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; *however, any civil penalties assessed with respect to property designated as an abandoned waste site pursuant to § 10.1-1402.02 shall be deposited into the Abandoned Waste Site Remediation Fund pursuant to § 10.1-1463.* 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 *or into the Abandoned Waste Site Remediation Fund pursuant to § 10.1-1463 if the violation arose with respect to property designated as an abandoned waste site pursuant to § 10.1-1402.02.*

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; *however, any civil charges assessed with respect to property designated as an abandoned waste site pursuant to § 10.1-1402.02 shall be deposited into the Abandoned Waste Site Remediation Fund pursuant to § 10.1-1463.*

G. 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.

H. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of \$1,000,000 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

798 and imprisonment for any subsequent conviction of the same person.

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

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

804 § 10.1-1456. Right of entry to inspect, etc.; warrants.

805 A. Upon presentation of appropriate credentials and upon consent of the owner or custodian, the
806 Director or his designee shall have the right to enter at any reasonable time onto any property to inspect,
807 investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order
808 to determine whether the provisions of any law administered by the Board, Director or Department, any
809 regulations of the Board, any order of the Board or Director or, any conditions in a permit, license or
810 certificate issued by the Board or Director, *or any remediation plans or cooperative agreements with*
811 *respect to an abandoned waste site pursuant to Article 9 (§ 10.1-1458 et seq.) of this chapter* are being
812 complied with. *If the owner or custodian of the site no longer exists or cannot be determined, the*
813 *consent of a person shall not be required prior to entry. If any such law, regulation, order, condition,*
814 *remediation plan or cooperative agreement has not been complied with, the Director or his designee*
815 *shall have the right, without first obtaining the consent of the owner, to enter the property and take*
816 *reasonable actions to contain or clean up the site and to abate hazards and nuisances dangerous to the*
817 *public health, safety or the environment created by the improper management of any solid waste or*
818 *other substance within the jurisdiction of the Board.*

819 B. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an
820 inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for
821 testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 *or an order authorizing entry upon*
822 *the abandoned waste site for the purpose of taking reasonable actions to contain and clean up the*
823 *property and to abate hazards and nuisances dangerous to the public health, safety or the environment*
824 *created by the improper management of any solid waste or other substance within the jurisdiction of the*
825 *Board.*

826 C. Any information obtained by the Director or his designee which contains or might reveal a trade
827 secret shall be confidential and shall be limited to those persons who need such information for the
828 purpose of determining whether the provisions of any law administered by the Board, Director or
829 Department, any regulations of the Board, any order of the Board or Director, any conditions in a
830 permit, license or certificate issued by the Board or Director, *or any remediation plan or cooperative*
831 *agreement with respect to an abandoned waste site pursuant to Article 9 (§ 10.1-1458 et seq.) of this*
832 *chapter are being complied with. It shall be the duty of each owner to notify the Director or his*
833 *designee of the existence of trade secrets when he desires the protection provided herein. Nothing herein*
834 *shall prevent the disclosure of the identity of the solid waste or other substance within the jurisdiction*
835 *of the Board improperly managed upon the property.*

836 Article 9.

837 Abandoned Waste Site Remediation Foundation.

838 § 10.1-1458. Definitions.

839 The following terms, whenever used or referred to in this article, shall have the following meanings,
840 except where the context clearly indicates otherwise:

841 "Abandoned waste site" means real property designated by the Virginia Waste Management Board as
842 an abandoned waste site pursuant to § 10.1-1402.02.

843 "Board of Trustees" means the Board of Trustees of the Foundation, or a qualified third party to
844 whom the Foundation has delegated powers, duties and responsibilities pursuant to a contract
845 authorized by this article.

846 "Foundation" means the Abandoned Waste Site Remediation Foundation established by this article,
847 or a qualified third party to whom the Abandoned Waste Site Remediation Foundation has delegated
848 powers, duties and responsibilities pursuant to a contract authorized by this article.

849 "Fund" means the Abandoned Waste Site Remediation Fund established by this article.

850 "Operator" includes any person who dumped, spilled, or otherwise disposed of solid waste or other
851 substance within the jurisdiction of the Board upon an abandoned waste site in violation of the
852 requirements of this chapter.

853 "Owner" includes the person holding title to or otherwise having possession of an abandoned waste
854 site at the time solid waste or other substance within the jurisdiction of the Board was improperly
855 managed thereon and at any time thereafter until remediation of the waste site is completed. "Owner"
856 shall not include the Foundation, the Board of Trustees, any receiver appointed pursuant to this article,
857 or the agents or employees of any of them.

858 "Qualified third party" means a corporation exempt from federal taxation pursuant to § 501(c)(3) of
859 the Internal Revenue Code having at least ten years of demonstrated experience in all phases of

contaminated site remediation decision-making, including site identification, site assessment and investigation, site prioritization and ranking, and site remedy selection and implementation.

"Remediation" or "cleanup" means taking all necessary actions with respect to property contaminated or damaged by the treatment, storage, discharge, dumping, spillage, or disposal of solid waste or other substance within the jurisdiction of the Board as are necessary to restore the property to a condition that complies with the requirements imposed by this chapter and the regulations, orders or permits promulgated or issued by the Board, and includes curing any violation of such requirements and regulations.

"State abandoned waste site" means an abandoned waste site acquired by the Commonwealth by escheat.

§ 10.1-1459. Foundation created.

There is hereby created and constituted the Abandoned Waste Site Remediation Foundation, hereinafter referred to as the Foundation, a body politic and corporate to be organized and to have such powers and duties as hereinafter provided.

§ 10.1-1460. Purposes of Foundation.

The Foundation is established for the purposes of (i) administering and remediating abandoned waste sites, directly or by contracting with a qualified third party, (ii) ensuring that the resources of the Commonwealth, federal agencies, and other persons provided for the cleanup of abandoned waste sites are allocated in an orderly and rational manner; and (iii) maximizing the financial resources available for the cleanup of abandoned waste sites. The exercise by the Foundation of the powers conferred by this article shall be deemed and held to be the performance of an essential governmental function.

§ 10.1-1461. Administration of Foundation; appointment and terms of Board of Trustees.

A. The Foundation shall be governed and administered by a Board of Trustees, consisting of the State Treasurer or his designee and eight trustees from the Commonwealth at large. Four of the trustees-at-large shall be appointed by the Governor, subject to confirmation by the General Assembly; two shall be appointed by the Speaker of the House of Delegates; and two shall be appointed by the Senate Committee on Privileges and Elections. The trustees-at-large shall have experience or expertise, personal or professional, in one or more of the following areas: natural resource protection and conservancy, solid waste management, real estate construction and development, financial management, remediation of environmentally contaminated property, strategic planning, local government administration, and public procurement. The trustees-at-large shall be appointed for terms of office as follows: one of the members appointed by the Governor and one of the members appointed by the Speaker of the House shall be appointed for terms of one year; one of the members appointed by the Governor and one of the members appointed by the Senate Committee on Privileges and Elections shall be appointed for terms of two years; one of the members appointed by the Governor and one of the members appointed by the Speaker of the House shall be appointed for terms of three years; and one of the members appointed by the Governor and one of the members appointed by the Senate Committee on Privileges and Elections shall be appointed for terms of four years. Appointments thereafter shall be made for terms of four years. Vacancies in the membership of the Board of Trustees shall be filled by appointment of the entity initially making the appointment for the unexpired portion of the term. No trustee-at-large shall be eligible to serve for more than two successive four-year terms; however, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. The term of the State Treasurer or his designee shall be coincident with that of the Governor. Immediately after such appointment, the members shall enter upon the performance of their duties.

B. The trustees-at-large shall elect annually a chairman and vice-chairman from the members of the Board of Trustees. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board of Trustees. A majority of the members of the Board of Trustees serving at any one time shall constitute a quorum for the transaction of business. The Board of Trustees shall meet at the call of the chairman.

C. Members of the Board of Trustees shall receive no compensation for their services but shall receive reimbursement for actual expenses incurred in the performance of their duties on behalf of the Foundation.

D. The chairman of the Board of Trustees, the State Treasurer, and any other person designated by the Board of Trustees to handle the funds of the Foundation shall post bond, with corporate surety, with the State Comptroller, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds available to the Foundation for such purpose.

§ 10.1-1462. Executive secretary.

The Director of the Department of Environmental Quality shall serve as executive secretary to the

921 Foundation and shall be responsible for the performance of such duties that the Foundation may direct.

922 § 10.1-1463. Abandoned Waste Site Remediation Fund established; administration.

923 A. There is hereby created in the State Treasury a special, nonreverting revolving fund to be known
924 as the Abandoned Waste Site Remediation Fund. The Fund shall be established on the books of the
925 State Comptroller.

926 B. The Fund consists of moneys appropriated from the general fund, grants and donations received
927 by the Foundation or a qualified third party acting pursuant to a contract with the Foundation, moneys
928 collected by the Foundation pursuant to the powers granted by this article, moneys paid into the Fund
929 pursuant to §§ 10.1-1455 and 10.1-2501, and other moneys received by the State Treasurer and
930 designated for deposit in the Fund. Interest earned on the Fund shall be credited to the Fund. Any
931 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
932 to the general fund but shall remain in the Fund.

933 C. The Foundation shall administer, manage, and make expenditures and allocations from the Fund.
934 The Foundation shall use moneys in the Fund solely for the purpose of administering and remediating
935 abandoned waste sites as provided by this article, including expenses incurred by the Department in
936 conducting activities pursuant to this article.

937 D. The disbursement of moneys from the Fund shall be made by the State Comptroller at the written
938 request of the Board of Trustees or the Director. Disbursements from the Fund may be made in
939 furtherance of the purposes outlined in this article.

940 § 10.1-1464. Forms of accounts and records; audit of same.

941 A. The accounts and records of the Foundation showing the receipt and disbursement of funds from
942 whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

943 B. The accounts and records of the Foundation shall be subject to an annual audit by the Auditor of
944 Public Accounts or his legal representative, and the costs of such audit shall be borne by the
945 Foundation. The Foundation's fiscal year shall be the same as the Commonwealth's. The Foundation
946 shall be subject to a periodic external review under the provisions of the Legislative Program Review
947 and Evaluation Act (§ 30-64 et seq.).

948 § 10.1-1465. Powers of Foundation.

949 In order to carry out its purposes, the Foundation shall have the following powers to:

950 1. Have succession until dissolved by the General Assembly, in which event title to the properties of
951 the Foundation, both real and personal, insofar as consistent with existing contractual obligations and
952 subject to all other legally enforceable claims or demands by or against the Foundation, shall pass to
953 and become vested in the Commonwealth;

954 2. Sue and be sued in its own name;

955 3. Promulgate regulations as it deems necessary for the administration of its functions in accordance
956 with the Administrative Process Act (§ 9-6.14:1 et seq.);

957 4. Accept, hold, and administer gifts and bequests of money, securities, or other property, real or
958 personal, for the purposes for which the Foundation is created;

959 5. Acquire by gift, devise, purchase, or otherwise, absolutely or in trust, and to hold and, unless
960 otherwise restricted by the terms of the gift or devise, to encumber, convey, or otherwise dispose of, any
961 real property, including any abandoned waste site, or any estate or interest therein, as may be
962 necessary and proper in carrying into effect the purposes of the Foundation;

963 6. Enter into contracts generally and execute all instruments necessary or appropriate to carry out
964 its purposes, as approved by the Attorney General or special counsel;

965 7. Make certifications to the Department of Taxation with respect to certified abandoned waste site
966 remediation property pursuant to § 58.1-3660.2;

967 8. Serve as the receiver of an abandoned waste site and perform all duties necessary or appropriate
968 in connection therewith;

969 9. Employ special counsel for the Foundation when, in the discretion of the Board of Trustees, (i)
970 because of the nature of the service to be performed, the Attorney General is unable to render same; (ii)
971 it is impractical or uneconomical for the Attorney General to render legal services; or (iii) it would be
972 improper for the Attorney General's office to render legal services due to a conflict of interests. The
973 compensation of such special counsel shall be fixed by the Board of Trustees and payable from the
974 Fund;

975 10. Enter into contracts on a sole source basis with a qualified third party by which the Foundation
976 may delegate to the qualified third party any or all of its powers, duties and responsibilities in
977 furtherance of the purposes of this article; and

978 11. Perform any lawful acts necessary or appropriate to carry out the purposes of the Foundation.

979 § 10.1-1466. Priority list for abandoned waste site remediation.

980 A. The Board of Trustees shall establish a list ranking all sites designated by the Board as
981 abandoned waste sites in order of priority of remediation. The priority of abandoned waste sites shall
982 reflect the judgment of the Board of Trustees with respect to the order in which resources, financial and

otherwise, available for administering and remediating abandoned waste sites should be allocated in order to eliminate the greatest amount of risk to public health and the environment while utilizing the resources available to the Foundation in the most efficient manner. In preparing the priority list, the Board of Trustees shall consider the (i) likelihood of arranging for the voluntary remediation of an abandoned waste site; (ii) availability of resources for the remediation of an abandoned waste site other than those in the Abandoned Waste Site Remediation Fund; and (iii) willingness of the governing body of the locality in which an abandoned waste site is located to assist in financing the remediation of an abandoned waste site, including providing tax increment financing pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Title 58.1.

B. In preparing and maintaining the priority list, the Board of Trustees shall solicit public involvement and shall conduct annually at least one meeting to obtain public comment. Decisions by the Board of Trustees regarding the preparation and designation of the priority list shall be exempt from the Administrative Process Act (§ 9-6.14:1 et seq.).

C. The priority list shall serve as a strategic plan for actions by the Board of Trustees in furtherance of the purposes of this article.

D. The Board of Trustees shall review and revise the priority list annually, or more frequently as may be appropriate, to reflect (i) additional designations of abandoned waste sites and (ii) the revocation of designations of abandoned waste sites by the Board, and to make such further modifications as the Board of Trustees deems consistent with the requirements of subsection A.

§ 10.1-1467. Remediation plans.

A. The Board of Trustees may adopt a remediation plan, consistent with the priority list, for each abandoned waste site. A remediation plan shall describe the course of action intended for the administration and remediation of an abandoned waste site.

B. Except as provided in § 10.1-1477 with respect to state abandoned waste sites, a remediation plan for an abandoned waste site shall provide for the implementation of one of the following options:

1. Enter into a cooperative agreement with the owner of the abandoned waste site or other person, providing for the voluntary remediation of the abandoned waste site by the owner or other person, pursuant to § 10.1-1468;

2. Acquire title to the abandoned waste site by condemnation through exercise of the Foundation's power of eminent domain pursuant to § 10.1-1473, by purchase, gift, exchange, or otherwise, and after acquiring title to the abandoned waste site either (i) enter into a cooperative agreement with a person and the Department providing for the voluntary remediation of the abandoned waste site by such person, pursuant to § 10.1-1468; or (ii) contract for its remediation pursuant to § 10.1-1469;

3. Enter an abandoned waste site pursuant to § 10.1-1472 and contract for its remediation pursuant to § 10.1-1469;

4. Request the circuit court of the appropriate jurisdiction to grant an injunction or other appropriate relief compelling the operator to remediate the abandoned waste site, pursuant to § 10.1-1470;

5. Request the circuit court of the appropriate jurisdiction to appoint a receiver, which may be the Foundation, to administer, remediate and sell the abandoned waste site, pursuant to § 10.1-1471;

6. Request the Director, the Department, and the Board, or any of them, to take such actions to contain or clean up sites or issue orders to require cleanup of abandoned waste sites or otherwise to comply with the requirements of this chapter, as authorized by § 10.1-1402 or § 10.1-1455; or

7. If the resources available to the Foundation do not permit the implementation of a remediation plan incorporating any of the other options enumerated in this subsection, monitor the abandoned waste site without instituting remedial actions.

C. In adopting a remediation plan for an abandoned waste site, the Board of Trustees shall review each of the options enumerated in subsection B, and determine which option best serves the purposes of the Foundation and is consistent with the priority list. The Board of Trustees shall monitor the implementation of each remediation plan, and may revise any remediation plan from time to time as it deems appropriate.

D. The Department shall assist the Board of Trustees in preparing remediation plans. The Board of Trustees is authorized to solicit assistance from any other person in preparing remediation plans.

E. Prior to adopting or revising a remediation plan, the Board of Trustees may conduct discovery proceedings pursuant to § 10.1-1476 in order to ascertain the assets, financial and otherwise, of an owner or operator available for the remediation of an abandoned waste site.

F. In selecting the appropriate option to be incorporated in a remediation plan, the Board of Trustees shall endeavor to (i) allow the voluntary remediation of an abandoned waste site pursuant to a cooperative agreement; (ii) require an owner or operator of the abandoned waste site to remediate or pay for the remediation of the abandoned waste site to the extent he is able to do so; and (iii) limit the amount of any assistance offered pursuant to a cooperative agreement to amounts necessary to enable

1044 *the recipient to accomplish remediation.*

1045 *G. The Board of Trustees shall solicit public involvement and shall conduct at least one meeting to*
1046 *obtain public comment in the locality where an abandoned waste site is located prior to adopting or*
1047 *revising a remediation plan. The Board of Trustees shall give any owner and operator, if known, the*
1048 *Department, and the governing body of the locality where an abandoned waste site is located, by*
1049 *certified mail at its address of record, thirty days' notice of the time, place, and purpose of the meeting*
1050 *of the Board of Trustees at which a remediation plan may be adopted or revised. The adoption of a*
1051 *remediation plan for an abandoned waste site shall be exempt from the Administrative Process Act*
1052 *(§ 9-6.14:1 et seq.).*

1053 *§ 10.1-1468. Cooperative agreements; incentives for voluntary remediation of abandoned waste sites.*

1054 *A. The Foundation is authorized to enter into cooperative agreements, pursuant to a remediation*
1055 *plan for an abandoned waste site, with the owner of an abandoned waste site or, if title to the*
1056 *abandoned waste site has been acquired by the Foundation, with any person acquiring title to the*
1057 *abandoned waste site from the Foundation as provided in subsection E. A cooperative agreement shall*
1058 *obligate the owner or other person (hereafter, the "remediating party") to clean up the abandoned waste*
1059 *site at its own expense, and in consideration for such undertaking the Foundation shall provide*
1060 *assistance to the remediating party as may be authorized and agreed upon.*

1061 *B. The Department shall join in any cooperative agreement for the purposes of (i) determining that*
1062 *the remediation to be performed under the agreement complies with the regulations regarding voluntary*
1063 *remediation performed pursuant to subdivision A 1 of § 10.1-1429.1, (ii) agreeing to oversee and*
1064 *supervise remediation activities to ensure compliance with the cooperative agreement and the*
1065 *remediation plan, (iii) issuing a certificate of satisfactory completion of remediation when remediation*
1066 *achieves applicable cleanup standards or when the Department determines that no further action is*
1067 *required, and (iv) agreeing to expedite the processing of any permits for the remediation of the site*
1068 *required to be issued by the Board, the State Water Control Board, or the Air Pollution Control Board,*
1069 *where no significant adverse environmental effect would result therefrom. The actual reasonable costs*
1070 *incurred by the Department in performing its obligations under a cooperative agreement shall be*
1071 *payable from the Fund.*

1072 *C. Certification of satisfactory completion of remediation pursuant to a cooperative agreement shall*
1073 *constitute immunity as provided in § 10.1-1429.2.*

1074 *D. A cooperative agreement shall provide that the remediating party shall be eligible for one or*
1075 *more of the following types of assistance:*

1076 *1. Income tax credits pursuant to § 58.1-439.6;*

1077 *2. Grants of money, payable from the Fund, to the remediating party to be used to pay a portion of*
1078 *the actual reasonable costs incurred by the remediating party in remediating the abandoned waste site;*
1079 *and*

1080 *3. Designation of the abandoned waste site as certified abandoned waste site remediation property*
1081 *pursuant to § 58.1-3660.2 in order to exempt the abandoned waste site from real estate taxes under*
1082 *Chapter 32 (§ 58.1-3200 et seq.) of Title 58.1.*

1083 *E. If the title to the abandoned waste site has been acquired by the Foundation, by condemnation or*
1084 *otherwise, the cooperative agreement shall provide the terms by which the Foundation will convey the*
1085 *abandoned waste site to the remediating party prior to or upon the completion of remediation of the*
1086 *site. If the abandoned waste site is conveyed to the remediating party prior to completion of*
1087 *remediation, the deed of conveyance shall provide that if the remediating party materially defaults in its*
1088 *obligations under the cooperative agreement, title to the abandoned waste site shall revert to the*
1089 *Foundation.*

1090 *F. Any cooperative agreement shall provide that it shall terminate, and any obligation of the*
1091 *Foundation to provide any of the types of assistance set forth in subsection D shall cease, at the option*
1092 *of the Foundation upon any material default by the remediating party.*

1093 *§ 10.1-1469. Contracting for remediation of abandoned waste sites.*

1094 *A. The Foundation is authorized to contract for and procure goods and services for remediating*
1095 *abandoned waste sites in furtherance of any remediation plan, conducting site assessments, developing*
1096 *remediation plans, and any other activity which the Foundation is authorized to undertake. If the*
1097 *Foundation is appointed as the receiver of any abandoned waste site pursuant to § 10.1-1471, any*
1098 *contracts entered into by it in such capacity for the remediation of abandoned waste sites shall be*
1099 *subject to the provisions of this section. Any remediation contract shall be approved as to form by the*
1100 *Attorney General or special counsel.*

1101 *B. Contracts for the procurement of goods and services pursuant to this section shall be awarded*
1102 *after competitive sealed bidding or competitive negotiation as provided in the Virginia Public*
1103 *Procurement Act (§ 11-35 et seq.).*

1104 *C. The Department shall, at the request of the Foundation, review any proposed remediation contract*
1105 *to determine whether the work to be performed under the contract complies with applicable federal and*

state requirements.

D. Any remediation contract shall (i) authorize the Department to enter the site and monitor the performance of the contractor's obligations under the contract; (ii) provide that the financial obligations of the Foundation shall be paid solely from the Fund and shall not exceed such sum as shall be determined by the Board of Trustees; (iii) provide that the contractor shall have no recourse against the Foundation or its assets, including the Fund, other than as expressly provided in the contract; and (iv) require the contractor and any subcontractor to waive any right to file or enforce any mechanic's lien it may have with respect to any abandoned waste site.

E. The liability of a contractor under a remediation contract pursuant to this section shall be limited as provided in § 10.1-1478.

F. In addition to such compensation as shall be provided by the terms of a remediation contract, a contractor remediating an abandoned waste site shall be eligible for income tax credits pursuant to § 58.1-439.6.

§ 10.1-1470. Suits to compel remediation of abandoned waste sites.

A. The Foundation is authorized to bring an action in an appropriate court for an injunction, mandamus, or other appropriate remedy to compel the operator of an abandoned waste site to comply with any condition of a permit or certification or any provision of this chapter, including, but not limited to, the remediation of any abandoned waste site.

B. If the operator of an abandoned waste site fails to obey an injunction, mandamus or other order of the court, the operator shall be subject to a civil penalty pursuant to subsection E of § 10.1-1455, and the Foundation is authorized to take any other action with respect to the abandoned waste site authorized by this article.

§ 10.1-1471. Receivership of abandoned waste sites.

A. The Foundation is authorized to seek the appointment of a receiver for the abandoned waste site in furtherance of any remediation plan, as provided in this section.

B. The circuit court of the city or county in which an abandoned waste site is located may, upon petition of the Foundation or the Department, appoint a receiver, which may be the Foundation, to administer and remediate an abandoned waste site. Upon appointment, the receiver shall take possession of the abandoned waste site pursuant to the order of the court, which order shall authorize the receiver to conduct any investigation, closure, remediation, sale or other transfer, or other activity consistent with this article as may be required or permitted by the court. Control of and responsibility for the abandoned waste site shall remain in the receiver until the receiver has administered and remediated the abandoned waste site as authorized by the order appointing the receiver.

C. The expenses of the receiver shall be paid from the Fund with the approval of the Board of Trustees. If any moneys in the Fund are used by the receiver in its administration and remediation of an abandoned waste site, the receiver shall reimburse the Fund for such amount from any money generated from the abandoned waste site, including proceeds from the sale or other transfer of the abandoned waste site.

D. Notice of any petition for the appointment of a receiver shall be provided to the owner of the abandoned waste site and all other parties having a substantial interest in the abandoned waste site as provided in §§ 8.01-591 and 8.01-592. The provisions of §§ 8.01-593 through 8.01-599 shall apply with respect to the appointment of any receiver pursuant to this section.

§ 10.1-1472. Right of entry; access to abandoned waste site.

A. Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Foundation, a receiver of an abandoned waste site appointed as provided in § 10.1-1471, or the designee or agent of either, shall have the right to enter at any reasonable time onto an abandoned waste site to inspect, investigate, evaluate, conduct tests, or take samples for testing in order to determine whether the provisions of any law, regulation or order regulating the management of solid waste or other substance within the jurisdiction of the Board, or any remediation plan or cooperative agreement, is being complied with. If the owner or custodian of the site no longer exists or cannot be determined, the consent of any person shall not be required prior to entry. If any such law, regulation, order, remediation plan or cooperative agreement has not been complied with, the Foundation, receiver, or the designee or agent of either, shall have the right, without first obtaining the consent of the owner, to enter the abandoned waste site and take reasonable actions to remediate the abandoned waste site and to abate hazards and nuisances dangerous to the public health and safety or the environment created by the improper management of solid waste or other substance within the jurisdiction of the Board upon the abandoned waste site.

B. If the Foundation, a receiver, or the designee or agent of either, 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, or an order authorizing entry upon the abandoned waste site for the purpose of taking

reasonable actions to remediate the abandoned waste site and to abate hazards and nuisances dangerous to the public health and safety or the environment created by the improper management of solid waste or other substance within the jurisdiction of the Board.

C. Any information obtained by the Foundation, a receiver, or the designee or agent of either, which contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purpose of determining whether the provisions of any remediation plan or cooperative agreement with respect to an abandoned waste site are being complied with. It shall be the duty of each owner to notify the Foundation of the existence of trade secrets when he desires the protection provided herein. Nothing herein shall prevent the disclosure of the identity of the solid waste, or other substance within the jurisdiction of the Board, improperly managed upon the abandoned waste site.

§ 10.1-1473. Condemnation of abandoned waste sites.

A. Subject to the approval of the Governor, the Foundation is authorized to exercise the power of eminent domain to acquire by condemnation any abandoned waste site which in the discretion of the Board of Trustees is necessary to implement the cleanup of the abandoned waste site pursuant to a remediation plan. Prior to exercising the power to condemn as authorized by this section, the Board of Trustees shall adopt a resolution declaring that the acquisition of an abandoned waste site is in the public interest and necessary for public use. The Foundation may acquire property already devoted to a public use, provided that no property belonging to any city, town or county or to any government or to any religious or charitable corporation may be acquired without its consent. Any exercise of the power to condemn as authorized in this section shall be in accordance with the provisions of Chapter 1.1 (§ 25-46.1 et seq.) of Title 25. Before any property is acquired by condemnation, the Board of Trustees may request the Attorney General to examine and report upon the title to the property, and, if requested, the Attorney General shall make such examination and report.

B. Any abandoned waste site condemned by the Foundation shall not be sold, leased, or otherwise conveyed or transferred by the Foundation unless the Foundation, preceding the consummation of any such sale or lease, finds and determines that such sale or lease is in furtherance of, or incidental to, the purposes of the Foundation under this article or that such property is no longer needed in furtherance of, or incidental to, such purposes. The Foundation is authorized to sell, lease or convey an abandoned waste site acquired by condemnation prior to the completion of remediation thereof only if the transferee has entered into a cooperative agreement as provided in subsection E of § 10.1-1468.

§ 10.1-1474. Lien for costs of remediation.

A. If moneys from the Fund are expended in connection with the administration or remediation of an abandoned waste site, the Foundation shall have a lien on the abandoned waste site for the amount so expended. The Foundation shall file in the office of the clerk of the circuit court of the city or county in which the abandoned waste site is located, a memorandum of lien (i) identifying by name and address the owner of the property to which the lien is to apply, if known; (ii) describing the property subject to the lien; and (iii) stating the amount and basis of the claim. The Foundation shall serve a copy of memorandum of lien on each owner, if known, as soon as practicable after the memorandum of lien is filed, by mail at the address of record in the tax assessor's office. The clerk in whose office the memorandum is filed shall record and index the lien in the manner provided by § 43-4.1 in the names of both the Foundation and the owner or owners, if known, of the property affected. Such lien shall be effective immediately upon recordation and indexing but shall be subject to the rights of any person with an interest in the affected property which is a matter of record in the clerk's office of the circuit court of such county or city at the time such lien is recorded.

B. If the property is subject to a credit line deed of trust under § 55-58.2, the Foundation shall give notice to the lender as in the case of a judgment.

C. Any person having an interest in real property against which a lien has been filed as provided in this section may petition the circuit court of the county or city in which the lien is recorded to determine the validity of the lien and whether the amount thereof is reasonable. After notice to the Foundation, the court shall hold a hearing and determine the validity of the lien and whether the amount thereof is reasonable. The lien shall be subject to challenge if it relates to costs not incurred in the administration or remediation of the abandoned waste site. If the court finds that the lien is invalid, it shall order that it be removed from record. If the court finds that the amount of the lien is excessive, it shall order an appropriate reduction.

D. The Foundation is authorized to institute an action pursuant to § 8.01-462 to enforce any lien perfected pursuant to this section.

§ 10.1-1475. Recovery of costs incurred by the Foundation.

Any person responsible for remediating an abandoned waste site shall reimburse the Foundation for his share of the moneys disbursed from the Fund for the administration and remediation of the abandoned waste site, as determined by the Foundation following a proceeding conducted in accordance with § 9-6.14:11. The Foundation shall in its discretion institute appropriate legal proceedings to obtain

reimbursement from the person for his share of the moneys disbursed from the Fund. The Foundation shall be allowed to recover all legal and court costs, including attorneys' fees, and other expenses incident to such collection proceedings.

§ 10.1-1476. Discovery of assets.

To ascertain the assets of the owner or operator of an abandoned waste site that may be available for the remediation of the abandoned waste site, upon the application of the Board of Trustees or the Foundation, the clerk of circuit court in whose jurisdiction the abandoned waste site is located shall issue a summons against (i) the owner or operator of an abandoned waste site, (ii) any officer of a corporation if such owner or operator is a corporation having an office in the Commonwealth, or (iii) any employee of a corporation if such owner or operator is a corporation having an office but no officers in the Commonwealth provided that a copy of the summons shall also be served upon the registered agent of the corporation. The summons shall require such person to appear before the court or a commissioner of the county or city in which such court is located, or a like court or a commissioner of a county or city contiguous thereto, to answer such interrogatories as may be propounded to him by the Board of Trustees, the Foundation, or its attorney, or the court or the commissioner as the case may be. Neither the Board of Trustees nor the Foundation shall proceed against an owner or operator under this section within six months following a previous proceeding under this section. The person served with such summons shall appear at the time and place stated in the summons and make answer to such interrogatories. If the person makes an objection against answering such interrogatories or any of them, the commissioner shall report the objection to the court issuing the summons, and if the court afterwards sustains any one or more of such objections, the answers given to such interrogatories as to which objections are sustained shall be held for naught. Notwithstanding the foregoing, the court issuing the summons, upon motion of the person and for good cause shown, shall transfer interrogatory proceedings to a forum more convenient to the person.

§ 10.1-1477. Remediation of state abandoned waste sites.

Notwithstanding anything to the contrary in this article, the Board of Trustees shall not exercise any of its powers with respect to a state abandoned waste site, other than including such property on the priority lists, until title to the property has been acquired by the Foundation pursuant to § 2.1-504.3. The remediation plan for a state abandoned waste site shall provide for the implementation of any of the options set forth in clauses (i) or (ii) of subdivision B 2 or subdivision B 7 of § 10.1-1467. Upon completion of remediation, title to the state abandoned waste site may be transferred or disposed of by the Foundation as may abandoned waste sites generally, and any proceeds from such transfer or disposition shall be deposited in the Literary Fund. The provisions of §§ 10.1-1471 and 10.1-1473 through 10.1-1476 shall not apply with respect to any state abandoned waste site.

§ 10.1-1478. Limitation of liability.

Neither the Foundation, the Department, the Board of Trustees or any member thereof; any agent or contractor of the Foundation or the Board of Trustees; nor any receiver appointed pursuant to § 10.1-1471, shall be subject to liability under any provision of law for any act or omission in connection with the administration, remediation, ownership, inspection, closure, or other activity relating to an abandoned waste site. The foregoing limitation shall not limit the liability of an individual officer or employee for damages arising from his gross negligence or intentional misconduct.

§ 10.1-1479. Disposition of remediated abandoned waste sites; liability of transferee.

A. The Foundation may sell, assign, lease, transfer or otherwise dispose of any remediated abandoned waste site by public or private sale, with or without public bidding, notwithstanding the provisions of any other law, or foreclose on any lien on an abandoned waste site held by it. The Foundation may release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it. Any proceeds from the Foundation's sale, assignment, lease, transfer, or other disposition of an abandoned waste site shall be deposited in the Fund, except that any proceeds from the disposition of state abandoned waste sites shall be deposited in the Literary Fund.

B. Any person not otherwise liable under state law or regulation to whom the Foundation transfers any abandoned waste site or any other real or personal property, tangible or intangible, or any right, easement, estate or interest therein, after the property has been remediated to the satisfaction of the Department and the Foundation, shall not be subject to civil enforcement or remediation action under this chapter, Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, the State Water Control Law (§ 62.1-44.2 et seq.), or any other applicable state law, or to private civil suit, related to contamination that was the subject of the satisfactory remediation, existing at or immediately contiguous to the property prior to the person acquiring title, security interest, or any other interest in such property.

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

1290 D. A person who holds title, a security interest, or any other interest in property prior to the
1291 property being acquired by a person described in subsection B shall not be relieved of any liability or
1292 responsibility by reacquiring title, a security interest, or any other interest in the property.

1293 E. The provisions of this section shall not be construed to limit the statutory or regulatory authority
1294 of any state agency or to limit the liability or responsibility of any person when the activities of that
1295 person alter the remediation referred to in subsection B. The provisions of this section shall not modify
1296 the liability, if any, of a person who holds title, a security interest, or any other interest in property
1297 prior to satisfactory remediation or the liability of a person who acquires the property after satisfactory
1298 remediation for damage caused by contaminants not included in the remediation.

1299 § 10.1-1480. Permits.

1300 The Board may grant a waiver from any provision of this chapter that would otherwise require the
1301 Foundation to obtain a waste disposal permit for any remediation of an abandoned waste site conducted
1302 pursuant to a remediation plan, where no significant adverse environmental effect would result from
1303 such waiver, and where a waste disposal permit is not required under applicable federal law.

1304 § 10.1-1481. Reimbursement agreements with local governments.

1305 The Foundation is authorized to enter into reimbursement agreements with the governing body of
1306 any county, city or town providing that the locality shall reimburse the Fund for an agreed-upon portion
1307 of the costs paid from the Fund to remediate an abandoned waste site within such locality, which sum
1308 shall be paid from tax increment financing as provided in Article 4.2 (§ 58.1-3245.6 et seq.) of Title
1309 58.1. Reimbursement agreements are not authorized if the Foundation has designated an abandoned
1310 waste site as certified abandoned waste site remediation property pursuant to § 58.1-3660.2.

1311 § 10.1-1482. Gifts and bequests to Foundation.

1312 A. Gifts and bequests of money, securities and other assets to the Foundation shall be deemed to be
1313 gifts for the Commonwealth, and the Foundation shall be exempt from all state and local taxes.

1314 B. The Foundation may accept loans, grants, contributions or other assistance from the federal
1315 government, the Commonwealth or any political subdivision thereof, or from any other public or private
1316 source to carry out any of the purposes of this article. The Foundation may enter into any agreement or
1317 contract regarding or relating to the acceptance, use or repayment of any such loan, grant, contribution
1318 or assistance and may enter into such other agreements with any such entity in furtherance of the
1319 purposes of this article.

1320 C. Counties, cities and towns are hereby authorized to lend or donate money or other property to the
1321 Foundation for any of its purposes. The local government making the grant or loan may restrict the use
1322 of such grants or loans to the remediation of a specific abandoned waste site, within or without that
1323 locality.

1324 § 10.1-1483. Legal representation of the Foundation.

1325 Except as provided in subdivision 9 of § 10.1-1465 regarding the appointment of special counsel,
1326 legal services in civil matters shall be rendered and performed by the Attorney General in accordance
1327 with Chapter 11 (§ 2.1-117 et seq.) of Title 2.1.

1328 § 10.1-1484. Reports to the Governor and General Assembly.

1329 The Foundation shall submit a report annually on the status of the Fund to the Governor and the
1330 General Assembly including, but not limited to, the (i) status of the priority list for remediation of
1331 abandoned waste sites, (ii) status of the remediation plan for each abandoned waste site, and (iii)
1332 expenditures from the Fund.

1333 § 10.1-2500. Virginia Environmental Emergency Response Fund established.

1334 A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter
1335 referred to as the Fund, to be used for the purpose of emergency response to environmental pollution
1336 incidents and for the development and implementation of corrective actions for pollution incidents, other
1337 than pollution incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as
1338 described in § 62.1-44.34:11 of the State Water Control Law.

1339 B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such
1340 moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

1341 1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to
1342 subsection B of § 10.1-1316 and civil charges assessed pursuant to subsection C of § 10.1-1316.

1343 2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed
1344 pursuant to subsections A and E of § 10.1-1455 and civil charges assessed pursuant to subsection F of
1345 § 10.1-1455, unless required to be deposited in the Abandoned Waste Site Remediation Fund as
1346 provided in § 10.1-1455.

1347 3. Civil charges assessed pursuant to subdivision 8d of § 62.1-44.15 and civil penalties assessed
1348 pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 9
1349 (§ 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,
1350 administrative or judicial order, or term or condition of approval relating to or issued under those
1351 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.

§ 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. *The Fund shall not exceed \$500,000. If the balance of moneys in the Fund exceeds \$500,000 at any time, the State Comptroller shall transfer such excess moneys from the Fund to the Abandoned Waste Site Remediation Fund established pursuant to § 10.1-1463.* 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.

§ 55-171. Annual report to escheator; lands not liable.

Each treasurer shall, every May, furnish to the escheator of his county or city a list of all lands within his district of which any person has died seized of an estate of inheritance (i) intestate and without any known heir, or (ii) testate without disposing of all property by will and without leaving any surviving heir to inherit the property, *and all other lands within his district for which there otherwise appears to have been a failure of title such that the land may have escheated to the Commonwealth.* No land shall be liable to escheat which (i) for fifteen years has been held under adverse possession as at common law by the person claiming the same, or those under whom he holds, but only if taxes were paid throughout that period by the claimant or those under whom he holds or (ii) *has been designated by the Board as an abandoned waste site as provided in § 10.1-1402.02, unless the Board of Trustees of the Abandoned Waste Site Remediation Foundation has notified the escheator in writing of its consent to the passage or reversion of title to such property by escheat to the Commonwealth.*

§ 55-182.2. Escheat of property with hazardous materials.

A. In addition to any other remedy provided by law, the Virginia Waste Management Board, pursuant to its authority granted in § 10.1-1402, or the Department of Waste Management, shall have recourse against any prior owner, operator, or the estate of any ~~prior owner~~ of them, for the costs of clean-up of escheated property in or upon which any hazardous material as defined in § 44-146.34 or any solid waste as defined in § 10.1-1400 or other substance within the jurisdiction of the Virginia Waste Management Board is found.

B. *In addition to any other remedy provided by law, the Abandoned Waste Site Remediation Foundation, pursuant to its authority granted in § 10.1-1475, shall have recourse against any prior owner or operator or the estate of any of them for the costs of clean-up of an escheated abandoned waste site.*

§ 58.1-439.6. Abandoned waste site remediation tax credit.

A. For taxable years beginning on and after January 1, 1998, any taxpayer who (i) remediates an abandoned waste site pursuant to § 10.1-1468 or (ii) contracts with the Foundation to remediate an abandoned waste site pursuant to § 10.1-1469 shall be allowed a credit against the taxes imposed by § 58.1-320 or § 58.1-400 in an amount equal to twenty-five percent of all expenditures paid or incurred by such taxpayer in such taxable year for remediating an abandoned waste site; however, the total amount of the tax credit allowed to any taxpayer under this section shall not exceed one million dollars for any abandoned waste site remediated by the taxpayer, and a taxpayer shall not be eligible for a tax credit under this section for more than three years for any abandoned waste site.

B. *The credits provided under this section shall be allowed only if (i) the remediation work on the abandoned waste site is performed in accordance with a cooperative agreement pursuant to § 10.1-1468, or a remediation contract pursuant to § 10.1-1469, and (ii) the Tax Commissioner approves a taxpayer's application for a credit. The Tax Commissioner shall not approve a taxpayer's application for a credit unless the Director of the Department of Environmental Quality and the Board of Trustees of the Abandoned Waste Site Remediation Foundation certify that the remediation work for which the credit is sought has been performed in accordance with the approved cleanup plan or remediation contract. Proper applications submitted to the Department for the credit shall be approved in the order received. The total amount of credits that may be approved in any year under this section shall not exceed five million dollars. For each application approved for credit it shall be assumed that the amount of the credit will be one million dollars, and the amount of the credit will be taken in the fiscal year in which the application is approved and the following two fiscal years. Approval of applications shall be limited to those that are assumed to result in no more than five million dollars of credits in any fiscal year based on the assumptions set forth in this subsection.*

C. Any tax credit not usable for the taxable year in which the credit is allowed may be carried over to the extent usable for the next three taxable years.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small

1413 business corporation (S corporation), or limited liability company shall be allocated to the individual
1414 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such
1415 business entities.

1416 Article 4.2.

1417 Tax Increment Financing for Remediation of Abandoned Waste Sites.

1418 § 58.1-3245.6. Definitions.

1419 As used in this article, unless the context clearly shows otherwise, the term or phrase:

1420 "Abandoned waste site" means real property designated by the Virginia Waste Management Board as
1421 an abandoned waste site pursuant to § 10.1-1402.02.

1422 "Base assessed value" means the assessed value of an abandoned waste site as shown upon the land
1423 book records of the local assessing officer on January 1 of the year preceding the effective date of the
1424 ordinance creating the waste site remediation project area.

1425 "Current assessed value" means the annual assessed value of an abandoned waste site as shown
1426 upon the land book records of the local assessing officer.

1427 "Foundation" means the Abandoned Waste Site Remediation Foundation established pursuant to
1428 Article 9 (§ 10.1-1458 et seq.) of Chapter 14 of Title 10.1, or a qualified third party as defined in
1429 § 10.1-1458 to whom the Foundation has delegated powers, duties, and responsibilities pursuant to an
1430 authorized contract.

1431 "Governing body" means the board of supervisors, council or other legislative body of any county,
1432 city or town.

1433 "Tax increment" means the amount by which the current assessed value of real estate exceeds the
1434 base assessed value.

1435 "Waste site remediation project area" means any abandoned waste site designated for tax increment
1436 taxation pursuant to this article in an ordinance passed by the local governing body.

1437 "Waste site remediation project cost commitment" means the commitment by a governing body to
1438 reimburse the Foundation for a sum specific of the costs incurred by the Foundation in remediating an
1439 abandoned waste site from the tax increment funds.

1440 § 58.1-3245.7. Abandoned waste sites constitute public danger; promotion of public health and
1441 safety.

1442 It is hereby found and declared that abandoned waste sites exist in the Commonwealth, and these
1443 areas impair economic values and tax revenues, and the presence and the threat of migration of
1444 dangerous substances from abandoned waste sites endanger the health, safety, and welfare of the
1445 citizens. It is also found to be in the public interest to promote the commerce and prosperity of the
1446 citizens of the Commonwealth by remediating abandoned waste sites. Local governments should assist in
1447 financing the remediation of abandoned waste sites in order to enhance the real estate tax base of such
1448 areas and to eliminate dangerous conditions. It is essential to the public interest that governing bodies
1449 have authority to assist in the financing of the remediation of abandoned waste sites by using tax
1450 increment financing.

1451 § 58.1-3245.8. Tax increment financing.

1452 A. The governing body of any county, city or town may adopt tax increment financing by passing an
1453 ordinance designating a waste site remediation project area and providing that real estate taxes in the
1454 waste site remediation project area shall be assessed, collected and allocated in the following manner
1455 for so long as any waste site remediation project cost commitments are outstanding and unpaid:

1456 1. The local assessing officer shall record in the land book both the base assessed value and the
1457 current assessed value of the real estate in the waste site remediation project area.

1458 2. Real estate taxes attributable to the lower of the current assessed value or base assessed value of
1459 real estate located in a waste site remediation project area shall be allocated by the treasurer or
1460 director of finance pursuant to the provisions of this chapter.

1461 3. Real estate taxes attributable to the increased value between the current assessed value of any
1462 parcel of real estate and the base assessed value of such real estate shall be allocated by the treasurer
1463 or director of finance and paid into a special fund entitled the "Tax Increment Financing Fund" to pay
1464 to the Foundation any waste site remediation project cost commitments.

1465 B. The governing body shall hold a public hearing on the need for tax increment financing in the
1466 county, city or town prior to adopting a tax increment financing ordinance. Notice of the public hearing
1467 shall be published once each week for three consecutive weeks immediately preceding the public hearing
1468 in each newspaper of general circulation in such county, city or town. The notice shall include the time,
1469 place and purpose of the public hearing, define tax increment financing, indicate the proposed
1470 boundaries of the waste site remediation project area, and state the proposal to enter into an agreement
1471 with the Foundation committing the locality to reimburse the Foundation for a portion of the costs of
1472 remediating the waste site remediation project area.

1473 § 58.1-3245.9. Copies of tax increment financing ordinance to local assessing officer and treasurer
1474 or director of finance.

The governing body shall transmit to the local assessing officer and treasurer or director of finance a copy of the tax increment financing ordinance, a description of all real estate located within the waste site remediation project area, a map indicating the boundaries of the waste site remediation project area and the manner of collecting and allocating real estate taxes pursuant to this article.

§ 58.1-3245.10. Reimbursement agreements with the Foundation.

The governing body of any county, city or town is authorized pursuant to this article to negotiate and enter into an agreement with the Foundation pursuant to § 10.1-1481 providing that the locality will reimburse the Foundation for a portion of the costs incurred by the Foundation in remediating a waste site remediation project area for a specified period, not to exceed ten years. Such agreement shall specify the amount of waste site remediation project cost commitments to be paid from the Tax Increment Financing Fund, and shall provide that any undertaking by the county, city, or town to make payments to the Foundation pursuant to a reimbursement agreement shall not exceed revenues deposited in the Tax Increment Financing Fund. Any undertaking by a county, city or town pursuant to a reimbursement agreement entered into pursuant to this article shall not constitute a pledge of the full, faith and credit of such locality. The ordinance authorizing the execution of the reimbursement agreement may require the payment of all or a portion of any waste site remediation project cost commitment in annual installments from the tax increment funds.

§ 58.1-3245.11. Dissolving the Tax Increment Financing Fund.

The governing body may pass an ordinance to dissolve the Tax Increment Financing Fund, and to terminate the existence of a waste site remediation project area, upon the payment of all waste site remediation project cost commitments. When the Tax Increment Financing Fund is dissolved, any revenue remaining in the Fund after payment or provision for payment of all such obligations and commitments shall be paid into the general fund of the county, city or town. Upon dissolving the Tax Increment Financing Fund, the real estate shall be assessed and taxes collected in the same manner as applicable in the year preceding the adoption of the tax increment financing ordinance, and pursuant to this chapter.

§ 58.1-3660.2. Certified abandoned waste site remediation property.

A. Certified abandoned waste site remediation property is declared to be real property primarily used for the purpose of abating pollution of the atmosphere or waters of the Commonwealth. Pursuant to Article X, Section 6 (d) of the Constitution of Virginia, certified abandoned waste site remediation property is declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classifications of real property. Certified abandoned waste site remediation property shall be exempt from taxation under Chapter 32 (§ 58.1-3200 et seq.) of this title.

B. As used in this section, "certified abandoned waste site remediation property" means any real property designated by the Virginia Waste Management Board as an abandoned waste site pursuant to § 10.1-1402.02 for which (i) a remediation plan has been approved pursuant to § 10.1-1467 and (ii) the owner thereof has entered into a cooperative agreement pursuant to § 10.1-1468 by which the owner has undertaken to perform the cleanup of the property in accordance with the remediation plan. Real property shall cease to be certified abandoned waste site remediation property upon the first to occur of (i) cessation of designation of the property as an abandoned waste site by the Waste Management Board or (ii) termination of the cooperative agreement.