VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 10.1-1400 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1424.2, relating to trichloroethylene prohibition; penalty.

[H 2789]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1400 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 10.1-1424.2 as follows:

§ 10.1-1400. Definitions.

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

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

"Board" means the Virginia Waste Management Board.

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

"Department" means the Department of Environmental Quality.

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

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

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

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

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

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

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

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

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

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

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

"Equity" includes both legal and equitable interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Radioactive waste" or "nuclear waste" includes:

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

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

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

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

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

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

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and

nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and paper which are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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