

999214202

HOUSE BILL NO. 1748

Offered January 13, 1999

A BILL to amend and reenact § 10.1-1408.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 10.1-1408.3, 10.1-1408.4, and 10.1-1410.2, an article numbered 2.1 in Chapter 14 of Title 10.1, consisting of sections numbered 10.1-1413.2, 10.1-1413.3, and 10.1-1413.4, an article numbered 7.2 in Chapter 14 of Title 10.1, consisting of a section numbered 10.1-1454.2, and a section numbered 62.1-241.7:1, relating to solid waste.

Patrons—Deeds, Albo, Moss, Murphy and Plum; Senators: Hanger and Trumbo

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1408.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 10.1-1408.3, 10.1-1408.4, and 10.1-1410.2, an article numbered 2.1 in Chapter 14 of Title 10.1, consisting of sections numbered 10.1-1413.2, 10.1-1413.3, and 10.1-1413.4, an article numbered 7.2 in Chapter 14 of Title 10.1, consisting of a section numbered 10.1-1454.2, and a section numbered 62.1-241.7:1 as follows:

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

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

B. No application for a new solid waste management facility permit shall be complete unless it contains the following:

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

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

3. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § ~~15.1-434~~ 15.2-2204, to receive public comment on the proposed facility. Such certification shall be provided to the applicant and the Department within 120 days from receipt of a request from the applicant;

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

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

5. If the applicant is a local government or public authority that proposes to operate a new municipal sanitary landfill or transfer station, a statement, including a description of the steps taken by the

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applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include the formation of a citizens' advisory group to assist the locality or public authority with the selection of a proposed site for the sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located, and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to public meeting date. For local governments that have zoning ordinances, such public comment steps as required under §§ ~~15.1-431~~ 15.2-2204 and ~~15.1-493~~ 15.2-2285 shall satisfy the public comment requirements for public hearings and public notice as required under this section. Any applicant which is a local government or public authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is already located shall be exempt from the public comment requirements for public hearing and public notice otherwise required under this section;

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

7. *If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, certification from the governing body of the locality in which the facility would be located that a host agreement has been reached between the applicant and the governing body. The agreement shall, at a minimum, have provisions covering (i) the amount of financial compensation the applicant will provide the host locality, (ii) infrastructure required for safety and transportation needs, (iii) the daily disposal limit, and (iv) the anticipated service area of the facility. The host agreement shall contain a provision that the applicant will pay the full cost of at least one full-time employee of the locality whose responsibility it will be to monitor and inspect waste transportation and disposal practices in the locality. The host agreement shall also provide that the applicant shall, when requested by the host locality, split air and water samples so that the host locality may independently test the sample, with all associated costs paid for by the applicant.*

C. Notwithstanding any other provision of law:

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

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

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

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

D. ~~Notwithstanding any other provision of law, no permit for a new solid waste management facility nor any amendment to a permit allowing facility expansion or an increase in capacity shall be issued until the Director has determined, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility poses no substantial, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with requirements of § 10.1-1408.4; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the additional capacity is consistent with~~

regional and local solid waste management plans developed pursuant to § 10.1-1411. The Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste. Subdivision D2, in lieu of this subdivision, shall apply to nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator.

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

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

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

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

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

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

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

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

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

K. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the treatment of waste and to establish an expedited approval process. Agricultural operations receiving only yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural

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

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

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

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

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

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

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

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

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

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

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

Category 2: Nonhazardous industrial waste facilities other than those that are located on property

owned or controlled by the generator of the waste disposed of in the facility, provided that the facility accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

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

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

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

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

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

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

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

Q. No owner or operator of a solid waste management facility shall accept wastes for incineration or disposal unless the transporter of the waste provides certification, in a form prescribed by the Board, that the waste is free of substances not authorized for disposal at the facility.

§ 10.1-1408.3. Landfill siting review.

A. Before granting a permit for a new sanitary landfill, the Director shall determine, in writing, that the site on which the landfill is to be constructed is suitable for the construction and operation of a sanitary landfill. In making his determination, the Director shall consider and address the following factors:

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

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

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

B. No new sanitary landfill shall be constructed:

1. In a 100-year flood plain;

2. In any tidal wetland or nontidal wetland contiguous to any surface water body;

3. In the recharge area for any aquifer serving an existing public water supply;

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

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

6. In any park or recreational area, wildlife management area or area designated by any federal or

306 state agency as the critical habitat of any endangered species; or

307 7. Over an active fault.

308 § 10.1-1408.4. Landfill daily volume limit.

309 On or before December 31, 1999, every sanitary landfill permitted under this section shall comply
310 with a daily volume limit restricting the amount of solid waste that may be disposed of in the facility.
311 The daily volume limit shall be negotiated between the landfill owner and the local governing body of
312 the locality in which the landfill is situated, and shall be incorporated in the host agreement required
313 under subdivision B7 of § 10.1-1408.1. In establishing the daily volume limit, the local governing body
314 shall consider the ability of the landfill operator to safely and properly manage and dispose of the
315 volume authorized by the host agreement, the local effect of vehicles transporting waste to the landfill
316 and the capacity guarantee requirement established under subsection P of § 10.1-1408.1. Any sanitary
317 landfill operating under a host agreement that was executed prior to January 1, 1999, that incorporates
318 a restriction or limitation on waste volume shall be deemed in compliance with this requirement. Failure
319 to comply with this requirement, or disposal of waste in excess of an established daily volume limit,
320 shall be a violation of this chapter.

321 § 10.1-1410.2. Landfill post-closure monitoring, maintenance and plans.

322 A. The owner and operator of any solid waste landfill permitted under this chapter shall be
323 responsible for ensuring that such landfill is properly closed in accordance with the Board's regulations
324 and that the landfill is maintained and monitored after closure so as to protect human health and the
325 environment. Maintenance and monitoring of solid waste landfills after closure shall be in accordance
326 with the Board's regulations. At all times during the operational life of a solid waste landfill, the owner
327 and operator shall provide to the Director satisfactory evidence of sufficient, secure and dedicated
328 financial resources to ensure that the landfill will be:

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

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

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

348 Article 2.1.

349 Virginia Solid Waste Environmental Stewardship Fund.

350 §10.1-1413.2. Virginia Solid Waste Environmental Stewardship Fund.

351 A. There is hereby created in the state treasury a special nonreverting fund to be known as the
352 Virginia Solid Waste Environmental Stewardship Fund, hereafter referred to as "the Fund." The Fund
353 shall be established on the books of the Comptroller. All fees collected pursuant to § 10.1-1413.3 shall
354 be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall
355 remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon,
356 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys
357 in the Fund shall be used solely for the purposes found in subsection B. Expenditures and disbursements
358 from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written
359 request signed by the Director.

360 B. The Fund shall be used for the following purposes:

361 1. Under the supervision of the Director of the Department of Environmental Quality, to pay
362 necessary costs of preventing, abating, removing and remediating releases or threatened releases of
363 pollutants to the environment from solid waste landfills that have been determined by the Director to be
364 causing harm to human health or the environment or creating an imminent and substantial risk of such
365 harm and for which funds for prevention, abatement, removal or remediation of releases or threatened
366 releases causing such harm or risk are insufficient or are unavailable from other sources. Expenditures
367 may be made from the Fund under this subdivision only for prevention, abatement, removal and

remediation of releases that occur or threaten to occur after the termination of the post-closure maintenance period established for the subject landfill, or after the Director has determined that the landfill has been abandoned by the owner in violation of this chapter.

2. For transfer, as provided in § 10.1-1413.3, to the Virginia Conservation and Recreation Fund established pursuant to Chapter 10.2 (§ 10.1-1017 et seq.) of this title, to be expended in accordance with the provisions contained therein.

3. For transfer, as provided in § 10.1-1413.3, to the Virginia Solid Waste or Recycling Revolving Fund (§ 62.1-241.2), for use by the Board according to § 62.1-241.7:1 to provide grants to local governments, subject to the provisions of subsection C of § 10.1-1413.4, for the proper final closure of landfills that are owned by local governments, or which are located in the locality and have been abandoned in violation of this chapter, and that are not equipped with liner and leachate control systems meeting the requirements of the Board's regulations, and as otherwise provided in § 62.1-241.7:1. The Department shall annually prioritize landfills in need of grants pursuant to this subdivision based on the greatest threat to human health and the environment.

§ 10.1-1413.3. Solid Waste Environmental Stewardship Fund; distribution.

A. Until January 1, 2009, moneys in the Fund shall be distributed as follows: fifty percent for subsection B2 of § 10.1-1413.2 and fifty percent for subsection B3 of § 10.1-1413.2.

After January 1, 2009, moneys in the fund shall be distributed as follows: twenty-five percent for subsection B2 of § 10.1-1413.2, twenty-five percent for subsection B3 of § 10.1-1413.2, and fifty percent for subsection B1 of § 10.1-1413.2.

B. Any moneys expended from the Fund for the purposes enumerated in subsection B1 of § 10.1-1413.2 and subsequently recovered by the Commonwealth pursuant to subsection F of § 10.1-1410 or by other means shall be deposited in the Fund for use pursuant to B1 of § 10.2-1413.2.

§ 10.1-1413.4. Solid Waste Environmental Stewardship Fund; fees; calculation.

A. In addition to the financial assurances required by this article for landfill closure and post-closure care, the owner or operator of each landfill permitted under this article to dispose of municipal solid waste, as defined by the Board's regulations, shall remit to the State Treasurer, for deposit into the Solid Waste Environmental Stewardship Fund, a fee of \$1.00 per ton of municipal solid waste disposed of at the landfill after December 31, 1999. Payment shall be made within ten days of the end of each quarter, with the first payment due by April 10, 2000. Remittance shall not be required under this subsection or under subsection B for waste accepted from localities utilizing the procedures found in subsection C.

B. 1. Not later than December 31, 2000, the owner or operator of every landfill that has received more than 1,500 tons per day of municipal solid waste on sixty or more days during any calendar year after 1994 shall submit to the Director a report indicating the average daily volume of solid waste received and disposed of at the landfill during each of the three most recent calendar years. The average daily volume of solid waste received and disposed of during a calendar year shall be calculated by dividing the total volume of solid waste in tons received and disposed of during the calendar year by the number of days that the facility received solid waste during the same period. The highest daily average volume of solid waste received and disposed of during any calendar year included in the reporting period shall constitute the landfill's Daily Threshold Volume.

2. For municipal solid waste disposed of at the landfill on any day after December 31, 2000, above the landfill's Daily Threshold Volume, in addition to the fees paid pursuant to subsection A, the owner or operator shall remit the following fees to the State Treasurer, for deposit into the Solid Waste Environmental Stewardship Fund:

a. 1,001 - 3,000 tons per day in excess of Daily Threshold Volume: \$0.50 per ton.

b. 3,001 - 5,000 tons per day in excess of Daily Threshold Volume: \$0.75 per ton in excess of 3,000 tons but less than 5,000 tons.

c. More than 5,000 tons per day in excess of Daily Threshold Volume: \$1.00 per ton in excess of 5,000 tons.

Payment shall be made quarterly, with the first payment due on March 31, 2001.

3. For new landfills permitted after December 31, 2000, the Daily Threshold Volume shall be the average daily volume of solid waste received and disposed of at the landfill during the first 180 days of the landfill's operation.

C. Any local government contracting for disposal in Virginia of municipal solid waste generated within its borders or disposing of such waste in a publicly or privately owned landfill shall be exempt from any fees charged for the purposes of subsections A or B, provided that the locality (i) advises the Director in advance of the beginning of the quarter for which a fee would otherwise be required and (ii) dedicates an amount equivalent to the amount that would otherwise be assessed to the purposes of the Virginia Solid Waste Environmental Stewardship Fund found in subsection B of § 10.1-1413.2.

D. The Department of Environmental Quality shall notify the owner or operator of every landfill

permitted to dispose of municipal solid waste of the requirements of this section not later than September 30, 1999.

Article 7.2.

Transportation of Solid and Medical Waste by Truck.

§ 10.1-1454.2. Regulation of Road Transportation of Waste.

A. The Board, in consultation with the appropriate agencies within the Secretariat of Transportation, shall develop regulations governing the commercial transport, loading and unloading of nonhazardous municipal solid waste (except scrap metal and source-separated recyclables) and regulated medical waste by truck as are necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, and to protect the Commonwealth's environment and natural resources from pollution, impairment, or destruction. Included in the regulations, to the extent allowable under federal law and regulation, shall be provisions:

1. Governing containers holding wastes so that they will be designed, constructed, secured and maintained so as to prevent the escape of wastes, liquids and odors and to prevent the loss or spillage of wastes in the event of an accident; and

2. Requiring owners of trucks transporting wastes regulated under this article to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Regulations governing the amount of any financial responsibility required shall take into consideration: (i) the risk of potential damage or injury that may result from spillage or leakage; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or interference with general health, welfare and property that may result.

B. The owner or operator of a truck from which there is spillage or loss of wastes subject to regulations under this article shall immediately report such spillage or loss in accordance with the regulations of the Board and shall immediately take all such actions as may be necessary to contain and remove such wastes.

C. No person shall transport wastes regulated under this article by truck unless the containers carried thereon are designed, constructed, loaded, operated and maintained in accordance with the regulations developed pursuant to subsection A. A violation of this subsection shall be a Class 1 misdemeanor. For the purposes of this subsection, the term "odors" means any emissions which cause an odor objectionable to individuals of ordinary sensibility.

§ 62.1-241.7:1. Grants to localities for landfill closure.

Subject to the provisions of subsection C of § 10.1-1413, funds transferred to the Fund from the Virginia Solid Waste Environmental Stewardship Trust Fund pursuant to § 10.1-1413.2 shall be used by the Board to provide grants to local governments for the proper final closure of landfills that are owned by local governments, or that are located in the locality and have been abandoned in violation of this chapter, and that are not equipped with liner and leachate control systems meeting the requirements of the Board's regulations. However, the Board may, if it finds that there exist sufficient funds to maintain significant and continuing progress in fulfilling the purposes of paragraph B 3 of § 10.1-1413.2, utilize up to ten percent of moneys that would otherwise go to such purposes to provide grants to localities to enhance recycling activities and recycling infrastructure, waste reduction efforts, litter control and anti-litter education efforts and for use by the locality to assist the private sector in providing these types of activities. The Board may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the Board.

2. That the Director of the Department of Environmental Quality shall not, prior to July 1, 2000, issue any permit for a new landfill which would accept municipal solid waste. Nothing herein shall prevent the Director from acting on any permit for which a notice of intent has been filed prior to January 1, 1999. The Department of Environmental Quality shall undertake a comprehensive study of the solid waste industry in Virginia, including an analysis of and recommendations regarding solid waste disposal practices, projections on future landfill capacity needs, mechanisms to enhance waste reduction and recycling, and needed state and federal legislation to protect human health and the environment. The Department shall report its results to the Governor and the General Assembly by December 1, 1999.

3. That the amendments made by this act to § 10.1-1408.1 shall not apply to any application for, or the processing and issuance of, any permit or permit amendment for a solid waste management facility for which such application was submitted to the Department on or before November 13, 1998.