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HOUSE BILL NO. 899

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 an article numbered 13, consisting of sections numbered 62.1-44.34:29 through 62.1-44.34:36, relating to aboveground storage tanks; Hazardous Substance Aboveground Storage Tank Fund; civil and criminal penalties.*

Patron—Lopez

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3.1 of Title 62.1 an article numbered 13, consisting of sections numbered 62.1-44.34:29 through 62.1-44.34:36, as follows:

*Article 13.**Hazardous Substance Aboveground Storage Tanks.***§ 62.1-44.34:29. Definitions.**

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

"Aboveground storage tank" means a tank or a series of interconnected tanks and its associated pipes that has a total storage capacity of 250 gallons or more, excluding its associated pipes that more than 90 percent above the surface of the ground or the floor of an underground area. "Aboveground storage tank" does not include (i) a tank used to contain oil; (ii) a line pipe and breakout tank of an interstate pipeline regulated under the federal Hazardous Liquid Pipeline Safety Act of 1979 or the federal Natural Gas Pipeline Safety Act of 1968, as amended; (iii) a liquid trap, atmospheric or pressure vessel, or associated gathering lines related to oil or gas production and gathering operations; (iv) a shipping container or other mobile tank that is subject to state or federal laws or regulations governing the transportation of hazardous materials, including a railroad freight car that is subject to federal regulation; (v) a barge or boat subject to federal regulation under the U.S. Coast Guard or U.S. Department of Homeland Security, including federal regulations promulgated at 33 C.F.R. Chapter I, or subject to other federal law governing the transportation of hazardous materials; (vi) a swimming pool; (vii) a device containing surface water, groundwater, demineralized water, noncontact cooling water, drinking water for human or animal consumption, or water stored for fire or emergency purposes; (viii) a device containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.); (ix) a device holding wastewater that is being actively treated or processed, including a clarifier, chlorine contact chamber, or batch reactor; (x) a tank that is empty and is held in inventory or offered for sale; (xi) a piece of electrical equipment, such as a transformer, circuit breaker, or voltage regulator transformer; (xii) a device holding reclaimed water; or (xiii) a tank subject to the Virginia Gas and Oil Act (§ 45.2-1600 et seq.). "Aboveground storage tank" does not include a tank located on a farm, the contents of which are used exclusively for agricultural purposes.

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

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Extremely hazardous substance" means any substance that is liquid at standard temperature and pressure and is listed as an Extremely Hazardous Substance in 40 C.F.R. Part 355.

"Facility" means any development, building, structure, or installation within the Commonwealth that includes an aboveground storage tank.

"Hazardous substance" means (i) any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; (ii) any substance defined in § 311(b) of the Federal Water Pollution Control Act of 1972 or listed in 40 C.F.R. Part 116; and (iii) any extremely hazardous substance. "Hazardous substance" does not include oil.

"Hazardous Substance Aboveground Storage Tank Fund" or "the Fund" means the fund created pursuant to § 62.1-44.34:35.

"Oil" means oil of any kind and in any form, including petroleum and any petroleum by-product, fuel oil, lubricating oil, sludge, oil refuse, oil mixed with other wastes, crude oil, and any other liquid hydrocarbon regardless of specific gravity.

"Operator" means any person who owns, operates, rents, or otherwise exercises control over or responsibility for an aboveground storage tank or facility.

"Person" means any individual, two or more individuals, firm, corporation, association, partnership, or governmental unit or agency thereof.

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59 "Tank" means a device that is designed to contain an accumulation of a hazardous substance for six
60 months or more and is constructed of nonearthen materials that provide structural support, such as
61 concrete, steel, or plastic. "Tank" includes such a device whether it is located indoors or outdoors and
62 whether it is fully enclosed or partially enclosed. "Tank" does not include a flow-through process tank
63 as defined in 40 C.F.R. Part 280.

64 "Underground area" means an underground room, including a basement or cellar, that provides
65 enough space for the physical inspection of the exterior of any tank situated on or above the surface of
66 the floor of such room.

67 **§ 62.1-44.34:30. Powers and duties of Board regarding aboveground storage tanks.**

68 The Board shall carry out the provisions of this article and compatible provisions of federal acts and
69 is authorized to:

70 1. Provide technical assistance and advice concerning all aspects of aboveground storage tank
71 management;

72 2. Collect data and information necessary to conduct the state aboveground storage tank program;

73 3. Apply for federal funds that become available under federal acts and transmit such funds to
74 appropriate persons;

75 4. Adopt regulations for aboveground storage tanks registration requirements, registration fees,
76 registration renewal requirements and fees, and recordkeeping requirements; and

77 5. Provide guidance to the Director on the contents of the report required under subsection H of
78 § 62.1-44.34:31.

79 **§ 62.1-44.34:31. Registration of aboveground storage tanks.**

80 A. By January 1, 2023, the operator of any aboveground storage tank shall register such tank with
81 the Director. The registration for each aboveground storage tank shall contain the following
82 information:

83 1. Information about the operator of the aboveground storage tank, including the operator's name
84 and address and information about the operator's contact person.

85 2. Information about the owner of the aboveground storage tank, including the owner's name and
86 address and information about the owner's contact person.

87 3. Information about the facility at which the aboveground storage tank is located, including its
88 name and address, information about any on-site contact person, and the number of aboveground
89 storage tanks at the same facility.

90 4. The date of installation of the aboveground storage tank.

91 5. The GPS (Global Positioning System) coordinates of the aboveground storage tank.

92 6. The capacity of the aboveground storage tank in gallons.

93 7. The current status of the aboveground storage tank, whether in service or out of service.

94 8. The manufacturer and model number of the aboveground storage tank, if known.

95 9. The current contents of the aboveground storage tank.

96 10. The predominant contents of the aboveground storage tank. For purposes of this section,
97 "predominant contents" means the hazardous substance that was in the aboveground storage tank for
98 the longest duration during the 12-month period preceding the registration or renewal.

99 11. The material of which the aboveground storage tank is constructed, including concrete, steel,
100 plastic, fiberglass, or another material.

101 12. The material of which any release prevention barrier for the aboveground storage tank is
102 constructed, including concrete, steel, plastic, fiberglass, or another material.

103 13. The type of cathodic protection provided for the aboveground storage tank, if any.

104 14. The type of overfill protection provided for the aboveground storage tank, if any.

105 15. The type of leak detection system provided for the aboveground storage tank, if any, including
106 visual monitoring, an in-tank gauging system, interstitial monitoring, soil vapor monitoring, or another
107 system.

108 16. The type of secondary containment provided for the aboveground storage tank, if any.

109 17. The date of the last inspection of the aboveground storage tank, description of any maintenance
110 of the aboveground storage tank undertaken in response to the inspection, and the name of any industry
111 standard pursuant to which the inspection was undertaken.

112 The registration shall be signed by an authorized representative of the operator, who shall certify on
113 the registration: "I certify under penalty of perjury that I have personally examined and am familiar
114 with the information submitted in this registration and that I believe that the submitted information is
115 true, accurate, and complete."

116 B. The Director may prepare an appropriate registration form or online submission system upon
117 which an operator can provide the information required in this section. An operator shall be able to
118 register multiple aboveground storage tanks located at a single street address using a single form or
119 submission.

120 C. Each registration shall be accompanied by a registration fee, payable to the State Treasurer and

creditable to the Hazardous Substance Aboveground Storage Tank Fund established pursuant to § 62.1-44.34:35, as follows: (i) \$50 for any aboveground storage tank with a capacity of at least 250 gallons but less than 1,000 gallons; (ii) \$150 for any aboveground storage tank with a capacity of at least 1,000 gallons but less than 5,000 gallons; (iii) \$250 for any aboveground storage tank with a capacity of at least 5,000 gallons but less than 25,000 gallons; and (iv) \$600 for any aboveground storage tank with a capacity of 25,000 gallons or more. No political subdivision of the Commonwealth shall charge a fee in connection with the registration of any aboveground storage tank under this article.

D. For aboveground storage tanks installed on or after January 1, 2023, but before the effective date of regulations adopted pursuant to subsection F, an operator shall submit a registration to the Director pursuant to subsection A, along with the appropriate registration fee, within 30 days of installation of the aboveground storage tank.

E. If after an initial aboveground storage tank registration title to an aboveground storage tank changes, the operator shall submit a registration renewal to the Director within 30 days after the title change. Such registration renewal shall include the information required in subsection A and shall be accompanied by the appropriate registration fee pursuant to subsection C.

F. By September 1, 2023, the Board shall adopt regulations regarding registration requirements, registration fees, registration renewal requirements and fees, and recordkeeping requirements. Such regulations may require operators to submit information that differs from that listed in subsection A. The fees listed in subsection C shall be valid for registrations before January 1, 2027. The Board may adjust the fees set forth in subsection C for registrations submitted on and after January 1, 2027.

G. 1. By September 1, 2023, the Director shall compile an inventory of aboveground storage tanks in the Commonwealth based upon the registrations received. Except as provided in subdivision 2, the inventory shall be publicly available through print and electronic means, shall be searchable electronically, and shall be updated at least annually thereafter, or upon adoption of a different schedule as specified by the Board through regulation.

2. Notwithstanding the requirements of subdivision 1, information about an individual aboveground storage tank may be withheld from public disclosure if the owner or operator of the tank notifies the Director of the applicability of an exemption from public disclosure set forth in § 2.2-3705.2 and indicates with particularity the information that should be withheld.

H. By September 1, 2024, and biennially thereafter, the Director shall produce a report summarizing in tabular and graphical form the data collected in the inventory.

§ 62.1-44.34:32. Access to aboveground storage tanks.

Any operator of an aboveground storage tank shall, upon request of the Director or his designee, furnish information relating to such tank and any associated equipment and contents; conduct reasonable monitoring or testing; permit the Director, at all reasonable times, to inspect and copy records relating to such tank; and permit the Director to access any aboveground storage tank for containment and cleanup. The Director or his designee may enter any facility or other place where an aboveground storage tank is located at any time; inspect and obtain samples of any fluid contained in an aboveground storage tank; conduct monitoring and testing of any aboveground storage tank, associated equipment, or contents or surrounding soils, surface water, or groundwater; and undertake containment and cleanup pertaining to a discharge or a substantial threat of a discharge as provided in this article.

§ 62.1-44.34:33. Discharge prohibited; aboveground storage tank safety.

The discharge of a hazardous substance from an aboveground storage tank into or upon any land, storm drain system, or state waters is prohibited.

§ 62.1-44.34:34. Reporting of discharge.

Any person discharging or causing or permitting a discharge from an aboveground storage tank of a hazardous substance that (i) enters into or upon any land, storm drain system, or state waters within the Commonwealth or (ii) reasonably may be expected to enter such waters, land, or drain system, and any operator of an aboveground storage tank from which there is such a discharge, shall, immediately upon learning of the discharge, notify the following of such discharge: (a) the Director; (b) the local director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs; (c) the local director or coordinator of emergency services appointed pursuant to § 44-146.19 for any other political subdivision reasonably expected to be affected by the discharge; and (d) appropriate federal or state authorities.

§ 62.1-44.34:35. Hazardous Substance Aboveground Storage Tank Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Hazardous Substance Aboveground Storage Tank Fund. The Fund shall be established on the books of the Comptroller. All moneys received by or on behalf of the Board pursuant to this article or any regulation adopted thereunder, except moneys received pursuant to § 62.1-44.34:36 or a regulation

182 directing that moneys received be paid into the state treasury and credited to the Virginia
183 Environmental Emergency Response Fund established pursuant to § 10.1-2500, shall be paid into the
184 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the
185 Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of
186 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund
187 shall be used solely for the purposes of administering the state regulatory programs authorized by this
188 article and shall not be used for corrective action or containment and cleanup. Expenditures and
189 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
190 Comptroller upon written request signed by the Director or his designee.

191 **§ 62.1-44.34:36. Enforcement; civil penalties.**

192 A. In the event of a (i) violation of any provision of this article, regulation, administrative or judicial
193 order, or term or condition of approval issued under this article or (ii) failure to comply with a special
194 order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to
195 obtain an injunction of such violation, to obtain any affirmative equitable relief that is appropriate, and
196 to recover all costs, damages, and civil penalties resulting from such violation or failure to comply. The
197 Board shall be entitled to an award of reasonable attorney fees and costs in any action in which it is a
198 prevailing party.

199 B. Any person who fails to register an aboveground storage tank in accordance with §
200 62.1-44.34:31 shall be subject to a civil penalty of not less than \$1,000 nor more than \$50,000 for the
201 initial violation, and \$1,000 per day for each day of violation thereafter. Any person who fails to report
202 a discharge as required by § 62.1-44.34:34 shall be subject to a civil penalty of not less than \$1,000
203 nor more than \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter.

204 C. Civil penalties may be assessed under this article either (i) by a court in an action brought by the
205 Board pursuant to this section, as specified in § 62.1-44.15, or (ii) with the consent of the person
206 charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and
207 deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund established
208 pursuant to § 10.1-2500. In determining the amount of any penalty, consideration shall be given to the
209 amount of the hazardous substance stored or discharged; the characteristics of the hazardous substance;
210 the willfulness of the violation; any history of noncompliance; the actions of the person in reporting,
211 containing, and cleaning up any discharge or threat of discharge; the damage or injury to state waters
212 or the impairment of their beneficial use; the cost of containment and cleanup; the nature and degree of
213 injury to or interference with general health, welfare, and property; and the available technology for
214 preventing, containing, reducing, or eliminating the discharge.