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HOUSE BILL NO. 1044

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 44-146.19, 62.1-44.5 and 62.1-44.34:23 of the Code of Virginia, relating to unauthorized discharges into state lands or waters and notification requirements.

Patrons—Darner, Crittenden and Spruill

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 44-146.19, 62.1-44.5 and 62.1-44.34:23 of the Code of Virginia are amended and reenacted as follows:

§ 44-146.19. Powers and duties of political subdivisions.

A. Each political subdivision within the Commonwealth shall be within the jurisdiction of and served by the Department of Emergency Management and be responsible for local disaster mitigation, preparedness, response and recovery. Each political subdivision may maintain in accordance with state disaster preparedness plans and programs an agency of emergency management which, except as otherwise provided under this chapter, has jurisdiction over and services the entire political subdivision.

B. Each political subdivision shall have a director of emergency management who, after the term of the person presently serving in this capacity has expired and in the absence of an executive order by the Governor, shall be the following:

1. In the case of a city, the mayor or city manager, who shall have the authority to appoint a coordinator of emergency management with consent of council;

2. In the case of a county, a member of the board of supervisors selected by the board or the chief administrative officer for the county, who shall have the authority to appoint a coordinator of emergency management with the consent of the governing body;

3. A coordinator of emergency management may be appointed by the council of any town to ensure integration of its organization into the county emergency management organization;

4. In the case of the Town of Chincoteague and of towns with a population in excess of 5,000 having an emergency management organization separate from that of the county, the mayor or town manager shall have the authority to appoint a coordinator of emergency services with consent of council;

5. In Smyth County and in York County, the chief administrative officer for the county may appoint a director of emergency management, with the consent of the governing body, who shall have the authority to appoint a coordinator of emergency management with the consent of the governing body.

C. Whenever the Governor has declared a state of emergency, each political subdivision within the disaster area may, under the supervision and control of the Governor or his designated representative, control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions, enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the political subdivision may proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.

D. The director of each local organization for emergency management may, in collaboration with other public and private agencies within this Commonwealth or within an adjacent state, develop or cause to be developed mutual aid arrangements for reciprocal assistance in case of a disaster too great to be dealt with unassisted. Such arrangements shall be consistent with state plans and programs and it shall be the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual aid arrangements.

E. Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional emergency operations plan for its area. The plan shall include, but not be limited to, responsibilities of all local agencies and shall establish a chain of command. Each political subdivision having a nuclear power station or other nuclear facility within ten miles of its boundaries shall, if so directed by the Department of Emergency Management, prepare and keep current an appropriate

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59 emergency plan for its area for response to nuclear accidents at such station or facility.

60 *F. Within thirty days of receiving notification of an unauthorized discharge pursuant to § 62.1-44.5,*
61 *or notification of an oil discharge pursuant to § 62.1-44.34:19, the local director of emergency*
62 *management, or his designee, shall (i) notify in writing, as to the location, extent and type of discharge,*
63 *all local neighborhood or civic associations whose members' water supply or property could reasonably*
64 *be foreseen to be affected by the discharge, and (ii) have an ongoing obligation and duty to keep such*
65 *associations informed, on at least a semi-annual basis, as to the progress of the clean-up, until such*
66 *time as the site has been remediated or the Board determines that no further action is needed.*

67 § 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as
68 authorized by permit; notification required.

69 A. Except in compliance with a certificate issued by the Board, it shall be unlawful for any person
70 to:

71 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious
72 substances;

73 2. Excavate in a wetland;

74 3. Otherwise alter the physical, chemical or biological properties of state waters and make them
75 detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic
76 or industrial consumption, or for recreation, or for other uses; or

77 4. On and after October 1, 2001, conduct the following activities in a wetland:

78 a. New activities to cause draining that significantly alters or degrades existing wetland acreage or
79 functions;

80 b. Filling or dumping;

81 c. Permanent flooding or impounding; or

82 d. New activities that cause significant alteration or degradation of existing wetland acreage or
83 functions.

84 B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i)
85 a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or
86 upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon
87 learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of
88 the Department of Environmental Quality, ~~or~~ *and the director or* coordinator of emergency services
89 appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the
90 discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial
91 notice within the time frame specified by the federal Clean Water Act.

92 § 62.1-44.34:23. Exceptions.

93 A. Nothing in this article shall apply to: (i) normal discharges from properly functioning vehicles and
94 equipment, marine engines, outboard motors or hydroelectric facilities; (ii) accidental discharges from
95 farm vehicles or noncommercial vehicles; (iii) accidental discharges from the fuel tanks of commercial
96 vehicles or vessels that have a fuel tank capacity of 150 gallons or less; (iv) discharges authorized by a
97 valid permit issued by the Board pursuant to § 62.1-44.15 (5) or by the United States Environmental
98 Protection Agency; (v) underground storage tanks regulated under a state program, *however, the*
99 *reporting requirements in subsection A of § 62.1-44.34:19 shall apply to underground storage tanks*
100 *regulated under a state program;* (vi) releases from underground storage tanks as defined in
101 § 62.1-44.34:8, regardless of when the release occurred, *however, the reporting requirements in*
102 *subsection A of § 62.1-44.34:19 shall apply to underground storage tanks as defined in § 62.1-44.34:8;*
103 (vii) discharges of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance
104 with federal pipeline safety regulations; or (viii) discharges authorized by the federal on-scene
105 coordinator and the Executive Director or his designee in connection with activities related to the
106 recovery of spilled oil where such activities are undertaken to minimize overall environmental damage
107 due to an oil spill into or on state waters. However, the exception provided in clause (viii) shall in no
108 way reduce the liability of the person who initially spilled the oil which is being recovered.

109 B. Notwithstanding the exemption set forth in clause (vi) of subsection A of this section, a political
110 subdivision may recover pursuant to subsection C of § 62.1-44.34:18 for a discharge of oil into or upon
111 state waters, lands, or storm drain systems from an underground storage tank regulated under a state
112 program at facilities with an aggregate capacity of one million gallons or greater.