

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 276

An Act to amend and reenact §§ 62.1-44.34:15 and 62.1-44.34:16 of the Code of Virginia, relating to oil contingency plans and financial assurance.

[H 440]

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.34:15 and 62.1-44.34:16 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.34:15. Oil discharge contingency plans.

A. No operator shall cause or permit the operation of a facility in the Commonwealth unless an oil discharge contingency plan applicable to the facility has been filed with and approved by the Board. No operator shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel has been filed with and approved by the Board *or a vessel response plan applicable to the tank vessel and approved by the U.S. Coast Guard, pursuant to § 4202 of the federal Oil Pollution Act of 1990.*

B. Application for approval of an oil discharge contingency plan shall be made to the Board and shall be accompanied by plans, specifications, maps and such other relevant information as may be required, in scope and detail satisfactory to the Board. An oil discharge contingency plan must conform to the requirements and standards determined by the Board to be necessary to ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time. Each such plan shall provide for the use of the best available technology at the time the plan is submitted for approval. The applicant shall notify the Board immediately of any significant change in the operation or capacity of or the type of product dealt in, stored, handled, transported or transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every ~~thirty-six~~ 36 months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The Board, after notice and opportunity for a conference pursuant to § 2.2-4019, may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;

2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or

3. There has been a significant change in the best available technology since the plan was approved.

D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval has been violated.

§ 62.1-44.34:16. Financial responsibility for vessels and facilities.

A. The operator of any tank vessel entering upon state waters shall *have a Certificate of Financial Responsibility approved by the U.S. Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990 or shall* deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section.

D. The Board is authorized to promulgate regulations requiring operators of facilities to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Operators of facilities shall demonstrate financial responsibility based on the total storage

capacity of all facilities operated within the Commonwealth. Regulations governing the amount of any financial responsibility required shall take into consideration the type, oil storage or handling capacity and location of a facility, the risk of a discharge of oil at that type of facility in the Commonwealth, the potential damage or injury to state waters or the impairment of their beneficial use that may result from a discharge at that type of facility, the potential cost of containment and cleanup at that type of facility, and the nature and degree of injury or interference with general health, welfare and property that may result from a discharge at that type of facility. In no instance shall the financial responsibility requirements for facilities exceed ~~five cents~~ \$.05 per gallon of aboveground storage capacity or ~~five million dollars~~ \$5 million for a pipeline. In no instance shall any financial test of self-insurance require the operator of a facility to demonstrate more than ~~one dollar~~ \$1 of net worth for each dollar of required financial responsibility. If such net worth does not equal the required financial responsibility, then the operator shall demonstrate the minimum required amount by a combination of financial responsibility mechanisms in accordance with subsection E of this section. No governmental agency shall be required to comply with any such regulations.

E. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator of a tank vessel and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator of a tank vessel or facility whose financial responsibility is accepted by the Board under this subsection shall notify the Board at least ~~thirty~~ 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety. Operators of facilities who are unable to demonstrate financial responsibility in the amounts established pursuant to subsection D may establish an insurance pool pursuant to the requirements of § 62.1-44.34:12 in order to demonstrate such financial responsibility.

F. Acceptance of proof of financial responsibility for tank vessels shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed ~~thirty~~ 30 days before the date of expiration.

G. Operators of facilities shall annually demonstrate and maintain evidence of financial responsibility for containment and cleanup in accordance with regulations adopted by the Board.

H. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

I. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or facility or the operator of the tank vessel or facility had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board.