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HOUSE BILL NO. 1211

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Counties, Cities and Towns
on February 8, 2010)

(Patrons Prior to Substitute—Delegates Spruill and Alexander [HB 206])

A BILL to amend the Code of Virginia by adding a section numbered 15.2-906.1, relating to the authority to require a permit for aboveground liquid fertilizer storage tanks; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-906.1 as follows:

§ 15.2-906.1. Authority to require a permit for aboveground liquid fertilizer storage tanks; penalty.

A. As used in this section, unless the context requires a different meaning:

"Aboveground liquid fertilizer storage tank" or "ALFST" means a device that contains an accumulation of liquid fertilizer (i) constructed of nonearthen materials, such as concrete, steel, or plastic, that provide structural support, (ii) having a capacity of 100,000 gallons or greater, and (iii) the volume of which, including the volume of pipes, is more than 90 percent above the surface of the ground. The term includes all ancillary aboveground and underground pipes and dispensing systems. The term does not include any wastewater treatment or wastewater storage tank, utility or industry pollution control equipment.

"API" means the American Petroleum Institute.

"API 653 Standard" means the American Petroleum Institute 653 Standard for tank inspection, repair, alteration, and reconstruction.

"Liquid fertilizer" means a fluid in which a fertilizer is in true solution. This term does not include anhydrous ammonia or a solution used in pollution control.

B. A locality may adopt an ordinance making it unlawful for any person to construct, maintain, or use any aboveground liquid fertilizer storage tank having a capacity of 100,000 gallons or greater, unless such tank is located underground, without first obtaining a permit from the local fire official; however, water tanks used for fire protection purposes shall be excluded from any such ordinance. Such an ordinance may also provide that the fire official may revoke a permit if the ALFST is an imminent threat to the public's health, safety, and welfare. The permit shall be approved contingent upon API 653 Standard compliance.

C. All aboveground liquid fertilizer storage tanks shall be inspected according to state-regulated API 653 Standard, as a minimal requirement. The inspections shall cover the premises, tanks, dikes, and related equipment. A licensed professional engineer who is registered in the Commonwealth, or a person who has been certified according to API 653 Standard, Appendix D, shall conduct the inspection.

D. The penalty for violating the provisions of such ordinance shall not be greater than the penalty imposed for a Class 1 misdemeanor. Each day's violation shall be construed as a separate offense.

E. Any such ordinance may be made applicable to aboveground liquid fertilizer storage tanks constructed before, as well as those constructed after, the adoption of the ordinance.

F. Nothing in this section shall apply to a tank storing liquid manure, sludge, or wastewater regulated by the Virginia Pollutant Discharge Elimination System Permit Regulation (9 VAC 25-31-10 et seq.) or the Virginia Pollution Abatement Permit Regulation (9 VAC 25-32-10 et seq.).

G. The provisions of this section shall expire on December 31, 2011.

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