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SENATE BILL NO. 198

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend the Code of Virginia by adding in Subtitle II of Title 15.2 a chapter numbered 28.3, consisting of sections numbered 15.2-2834 through 15.2-2848, relating to the regulation by localities of aboveground storage tanks containing liquid fertilizer.*

Patron—Blevins

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Subtitle II of Title 15.2 a chapter numbered 28.3, consisting of sections numbered 15.2-2834 through 15.2-2848, as follows:

CHAPTER 28.3.**ABOVEGROUND LIQUID FERTILIZER STORAGE TANKS.****§ 15.2-2834. Definitions.**

As used in this chapter, 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, which 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 tank at a wastewater treatment facility.

"API Standard 653" means the American Petroleum Institute Standard 653 For Tank Inspection, Repair, Alteration, and Reconstruction.

"Capacity" means the maximum volume of liquid fertilizer in gallons that may be contained by an aboveground storage liquid fertilizer storage tank pursuant to the tank's design.

"Discharge" means any spilling, leaking, pouring, emitting, emptying or dumping of liquid fertilizer.

"Fertilizer" means any substance containing one or more recognized plant nutrients that is used for its plant nutrient content, and which is designed for use, or claimed to have value, in promoting plant growth.

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

"Operator" means any person in control of, or having responsibility for, the daily operation of the aboveground liquid fertilizer storage tank.

"Owner" means a person who holds title to, controls, or owns an interest in the aboveground liquid fertilizer storage tank or tank system.

"Secondary containment" means a containment system designed and constructed to retain liquid fertilizer that leaves the primary containment, including an aboveground liquid fertilizer storage tank and ancillary piping, and prevents any liquid fertilizer from reaching the surface water, groundwater, or adjacent land before cleanup occurs. It may include dikes, berms, or retaining walls; curbing; diversion ponds; holding tanks; sumps, vaults, double-walled tanks; liners external to the tank; or other means approved by the locality.

"Tank" means any device designed to contain liquids or other materials.

§ 15.2-2835. Localities to regulate ALFST.

A. Every locality in which an ALFST is located shall, by ordinance, regulate the installation, operation, retrofitting, maintenance, repair, abandonment, and the removal of an ALFST in order to prevent discharges, and when a discharge occurs to provide for the detection and remediation at the earliest possible stage, thus minimizing further degradation of soil, surface and ground water, and protecting human health and safety. Such ordinance shall also provide for the registration, pollution prevention standards and procedures, inventory control, inspections, the development of a liquid fertilizer discharge contingency plan, construction and installation standards, recordkeeping, inspection, and the permanent closure for an ALFST.

B. Such ordinance shall include the provisions of this chapter.

§ 15.2-2836. Registration of ALFST required; fee.

A. A locality may establish by ordinance a fee schedule for ALFSTs. A fee may be assessed on each ALFST upon the registration of a newly installed ALFST, on an ALFST brought back into use after permanent closure or retrofitting, upon registration renewal, or when title to the ALFST is transferred

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59 (change of ownership). The amount of the fee shall be reasonable and shall be used solely to cover a
60 portion of the costs of administering the ordinance. Registration shall be renewed at least once every
61 five years by payment of registration fees as provided for in the ordinance. The owner or duly
62 authorized representative of a new ALFST, a converted tank, or an ALFST brought back into use after
63 permanent closure shall register such ALFST with the locality within 30 days after being brought into
64 use.

65 B. Registration shall include as a minimum:

- 66 1. ALFST owner and operator information (name, address, phone numbers);
- 67 2. Facility information (name, type, address, contact person and phone numbers);
- 68 3. ALFST and piping information (storage capacity, type of liquid fertilizer stored, type of tank
69 design and construction standards);
- 70 4. Other information that may be reasonably required by the locality; and
- 71 5. Owner certification of the information.

72 C. An ALFST installed after the effective date of the ordinance shall not be registered without either
73 (i) a review performed by the locality of the permits, inspections, and certification of use required in
74 accordance with the National Fire Protection Association (NFPA) Code 30, the Statewide Fire
75 Prevention Code (§ 27-94 et seq.), the Building Officials and Code Administrators (BOCA) National
76 Building Code, and the International Building Code, which has been obtained by the owner or operator
77 from the locality or (ii) an inspection by the locality.

78 § 15.2-2837. Liquid Fertilizer Discharge Contingency Plan required; locality's response.

79 A. A locality shall by ordinance require the development of a liquid fertilizer discharge contingency
80 plan by the owner or operator that will ensure that the owner or operator can take such steps as are
81 necessary to (i) protect public health and the environment, (ii) respond to the threat of a discharge from
82 the ALFST, (iii) contain, and (iv) clean up and mitigate a liquid fertilizer release within the shortest
83 feasible time.

84 B. The liquid fertilizer discharge contingency plan shall describe the storage, handling, disposal, and
85 incident handling practices. The plan shall be submitted to the locality upon request. The plan shall be
86 available for inspection by the locality.

87 C. Such plan shall provide for the use of the best available technology, which shall be economically
88 feasible, proven effective and reliable, and compatible with the safe operation of the ALFST. In
89 developing the plan, the owner or operator shall include the following as a minimum:

90 1. The name of the facility in which the ALFST is located, and access roads from land and water, if
91 appropriate;

92 2. The names and addresses of the operator of the ALFST and the facility in which the ALFST is
93 located;

94 3. A physical description of the facility in which the ALFST is located that identifies the liquid
95 fertilizer storage area, transfer location, control station, and above and below ground liquid fertilizer
96 transfer piping within the facility;

97 4. The position, title, address, and phone number of individuals authorized to act on behalf of the
98 owner or operator, to implement containment and clean-up actions;

99 5. An inventory of the facility's containment equipment;

100 6. Identification and location of natural resources at risk;

101 7. Liquid fertilizer inventory control procedures;

102 8. Procedures to be followed, upon detection of a discharge, for testing and inspections of all
103 ALFSTs and piping that could be expected to be a source of discharge; and

104 9. Description of the security procedures used by the operator to avoid intentional or unintentional
105 damage to the ALFST.

106 § 15.2-2838. Pollution prevention standards and procedures; inventory control; inspections.

107 A. The ordinance shall require each operator to institute inventory control procedures capable of
108 detecting a significant variation of inventory. A significant variation shall be considered a gain or loss
109 of one percent of the individual ALFST's storage capacity. Inventory records shall be kept of incoming
110 and outgoing volumes of liquid fertilizer from each ALFST.

111 B. Each ALFST shall undergo formal internal and external inspections. Inspections shall be
112 conducted in accordance with provisions of API Standard 653 and any other procedure approved by the
113 locality. The initial formal internal and external inspections for an existing ALFST shall be completed
114 within two years of adoption of the ordinance. An API Standard 653 inspection that was conducted
115 prior to the effective date of the ordinance may be accepted by the locality if the operator provides
116 supporting documentation to the locality for review and approval. Each ALFST shall undergo an
117 internal reinspection at least once every 10 years and an external reinspection at least once every five
118 years in accordance with the provisions of API 653. Each new installed ALFST shall have an initial
119 formal inspection prior to filling the ALFST with liquid fertilizer.

120 C. The operator or duly authorized representative shall conduct a daily visual inspection. The person

conducting the inspection shall document completion of the inspection by making and signing an appropriate notation in the ALFST records. The locality may prescribe the elements to be covered by the visual inspection.

D. Each operator shall establish a training program for those persons conducting the daily inspection.

E. Each secondary containment apparatus shall be maintained, evaluated, or certified with respect to its compliance with the locality's requirements. A secondary containment area shall be adequate for containment of ALFST discharges, and designed, inspected and certified by a registered professional engineer.

F. Each owner or operator shall institute safe fill, shutdown, and transfer procedures established by the locality, which will ensure that discharges resulting from ALFST overfills or other product transfer operations do not occur.

§ 15.2-2839. ALFST construction and installation standards.

A. Each ALFST container and appurtenance shall be constructed, installed and maintained to prevent the discharge of liquid fertilizer. Each ALFST container and appurtenance shall be constructed of materials that are resistant to corrosion, puncture or cracking.

B. All ALFSTs shall be built in accordance with the applicable design standards adopted by Underwriters Laboratories, the American Petroleum Institute, the Steel Tank Institute or other standards approved by the locality. All ALFSTs shall be strength tested before being placed in use in accordance with the applicable code or standard under which they were built.

C. All ALFSTs installed after the adoption of the ordinance shall be constructed and installed in a manner consistent with the applicable standards and requirements found in the National Fire Protection Association (NFPA) Code 30, the Statewide Fire Prevention Code (§ 27-94 et seq.), the Building Officials and Code Administrators (BOCA) National Building Code, the International Building Code, or other standards approved by the locality. Approval and any applicable permits shall be obtained from the locality before construction starts.

§ 15.2-2840. Requirements for installation of new ALFSTs and tanks converted to ALFSTs.

A. The owner or operator of a new ALFST or an existing tank that will be converted to an ALFST shall notify the locality of all proposed new ALFSTs and converted tanks used for storing liquid fertilizer at least 60 days prior to installation and shall provide the following information:

1. Date of installation;
2. Location and drawings of the facility in which the ALFST is located in sufficient detail to locate the ALFST with respect to property lines, buildings, and other structures located on the property;
3. Type of ALFST and piping leak detection system;
4. Description of liquid fertilizer to be stored;
5. Type of overfill protection device;
6. Description of proposed method of secondary containment;
7. Design of proposed cathodic protection system;
8. Description of the ALFST to be installed, including dimensions, capacity, material of construction, manufacturer's name and address, model number, supplier's name and address;
9. Description of piping to be used; and
10. Other information required by the locality.

B. Upon notification by the owner or operator, a review by the locality of the notification and accompanying documents shall be made regarding compliance with the requirements for a new ALFST or an existing tank that will be converted to an ALFST before operation commences. A formal letter of approval or denial of installation shall be issued by the locality within 60 days of receipt of the owner's or operator's notification.

§ 15.2-2841. Financial responsibility requirement.

The locality shall establish requirements for maintaining evidence of financial responsibility as necessary for taking reasonable corrective action for property damage and bodily injury caused by a discharge arising from the operation of an ALFST. Evidence of financial responsibility may include: insurance, guarantee, surety bond, letter of credit, proof of assets, or qualification as a self-insurer.

§ 15.2-2842. Recordkeeping.

A. Each operator of an ALFST subject to the ordinance shall maintain the following records:

1. Records related to all required measurements and inventory of liquid fertilizer in the ALFST;
2. Records related to required tank and pipe testing and inspections;
3. Records related to discharge events and other discharges of liquid fertilizer from the ALFST;
4. Records related to the secondary containment testing and inspection;
5. All records of implementation and monitoring of leak detection and the liquid fertilizer discharge contingency plan;
6. Records relating to the training of individuals; and

182 7. Any other records required by the locality to be kept by the owner or operator.
183 B. The ordinance shall provide for the length of time such records shall be retained at the facility
184 where the tank is located.
185 § 15.2-2843. Notification.
186 An owner, operator, or duly authorized representative shall notify the locality at least 30 days prior
187 to any ALFST:
188 1. Upgrade;
189 2. Major repair;
190 3. Replacement, relocating, or repositioning of an existing ALFST; or
191 4. Change in service (i.e., change in operation, conditions of the stored liquid fertilizer, specific
192 gravity, corrosion, temperature, or pressure) that has occurred that may affect the ALFST's suitability
193 for service.
194 § 15.2-2844. ALFST taken out of service; brought back into service.
195 When any ALFST is taken out of service, the owner or operator shall remove all liquid fertilizer
196 from the ALFST, connected piping, and appurtenances and thoroughly clean the interior of the ALFST
197 and all associated piping of all residuals. When taken out of service, the ALFST shall be clearly labeled
198 with the words "Out of Service." Prior to placing an inactive ALFST back into service, the owner shall
199 have the ALFST thoroughly inspected and tested in accordance with subsection B of § 15.2-2838.
200 § 15.2-2845. Permanent closure of ALFSTs.
201 A. An ALFST shall not be permanently closed without being registered and the fee paid, and either
202 (i) a review performed by the locality of the permits, and inspections required in accordance with the
203 provisions of the National Fire Protection Association (NFPA) Code 30, the Statewide Fire Prevention
204 Code (§ 27-94 et seq.), the Building Officials and Code Administrators (BOCA) National Building Code,
205 and the International Building Code, which has been obtained by the owner or operator from the local
206 building code officials or their designees or (ii) an inspection by the locality. Closure operations shall
207 be reported by the owner or a duly authorized representative 30 days prior to completion of the
208 permanent closure operation.
209 B. The locality in its ordinance shall prescribe what procedures shall be followed and what
210 standards shall be met by the ALFST owner or operator in permanently closing the ALFST. These
211 procedure standards shall include as a minimum:
212 1. All liquid fertilizer and vapors shall be removed from the ALFST and associated piping. All waste
213 shall be removed in accordance with applicable local codes and state and federal regulations, when
214 applicable;
215 2. Adequate ventilation shall be provided for in order to ensure the ALFST remains vapor-free;
216 3. Vent lines shall remain open and maintained in accordance with applicable codes;
217 4. All access openings shall be secured and the ALFST shall be secured against tampering and
218 flooding; and
219 5. Piping shall be disconnected.
220 § 15.2-2846. Reporting of discharge.
221 A. All persons, including the owner or operator, shall report immediately to the locality and the
222 National Response Center a discharge from the ALFST and shall as soon as possible take measures for
223 the prompt control, containment, and removal of the liquid fertilizer that has been discharged.
224 B. A locality may take measures for the prompt control, containment, and removal of liquid fertilizer
225 when it determines that the owner or operator is not responding promptly or appropriately. All liability
226 for costs incurred by a locality in responding to a discharge, which may include remediation costs,
227 equipment costs, supply costs, legal costs, and administrative oversight costs, remain with the owner and
228 operator.
229 § 15.2-2847. Locality's authority.
230 Any ordinance adopted by a locality as required by this chapter may be more restrictive or more
231 extensive in scope than the requirements of this chapter.
232 § 15.2-2848. Penalty.
233 The governing body of any locality shall by ordinance provide that any violation of such ordinance
234 is a Class 1 misdemeanor. In lieu of any criminal penalty, the locality may impose a civil penalty not to
235 exceed \$1,000. Each day during which the violation is found to have existed shall constitute a separate
236 offense. However, specified violations arising from the same operative set of facts shall not be charged
237 more frequently than once in any 10-day period. The ordinance shall provide for a maximum amount
238 that may be assessed from a series of specified violations arising from the same operative set of facts.